

CULTIVATING CIVILIZATION: THE CONFUCIAN PRINCIPLES BEHIND THE CHINESE COMMUNIST PARTY’S MASS IMPRISONMENT OF ETHNIC MINORITIES IN XINJIANG AND WHAT HUMAN RIGHTS ADVOCATES CAN DO TO STOP IT

EMMA IANNINI*

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I. INTRODUCTION

Since the launch of its “Re-education” campaign in April 2017, the Chinese Communist Party (CCP or the Party) has imprisoned an estimated one million Uighurs, Kazakhs, and Muslims from other ethnic Turkic minorities in the Semi-Autonomous Region of Xinjiang (新疆).¹ Under a stated intention to eradicate terrorism, the Party has separated members of these ethnicities from their families and forced hundreds of thousands of Muslims to denounce their religion and work with little to no remuneration in state-operated factories.²

* Emma Iannini graduated from NYU Law in May of 2020. She studied Regional & Comparative Studies at Georgetown University’s School of Foreign Service and has worked and lived in France, the People’s Republic of China and the Netherlands. She currently practices International Arbitration at King & Spalding LLP in NYC. Many thanks to Prof. Hugh Scogin for his guidance, patience, and countless edits to this note.

1. Philip Wen & Olzhas Auyezov, Tracking China’s Muslim Gulag, REUTERS (Nov. 29, 2018), https://www.reuters.com/investigates/special-report/muslims-camps-china/ [https://perma.cc/SJ2X-DRN3].

2. Id.; Chris Buckley & Austin Ramzy, Inside China’s Push to Turn Minorities into an Army of Workers, N.Y. TIMES (Dec. 30, 2019), https://

There is no question that these actions are normatively abhorrent and violate various principles of international human rights law (IHRL) as widely acknowledged by many Western governments,³ U.N. Special Rapporteurs and human rights bodies,⁴ prominent NGOs,⁵ journalists,⁶ and academics.⁷ How-

www.nytimes.com//30/world/asia/china-xinjiang-muslims-labor.html
[<https://perma.cc/8GHC-7A22>].

3. E.g., *US House Approves Uighur Act Calling for Sanctions on China's Senior Officials*, *GUARDIAN* (Dec. 4, 2019), <https://www.theguardian.com//dec/04/us-house-approves-uighur-act-calling-for-sanctions-on-chinas-politburo-xinjiang-muslim> [<https://perma.cc/9MC8-ZY6M>] (reporting comments from U.S. Representatives describing China's actions in Xinjiang as "audaciously repressive" and "an outrage to the collective conscience of the world."); Zamira Rahim, *UK Joins 22 Other UN Nations in Condemning China's Detention of Uighur Muslims*, *INDEPENDENT* (Oct. 30, 2019), <https://www.independent.co.uk//world/uighur-muslim-china-xinjiang-united-nations-human-rights-uk-religious-freedom-a9177191.html> [<https://perma.cc/MFR5-G47G>] (discussing a vote at the U.N. Human Rights Council to denounce the PRC's Re-education program in Xinjiang).

4. Nick Cumming-Bruce, *U.N. Rights Officials Criticize China over Muslim Internments*, *N.Y. TIMES* (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/world/asia/un-china-xinjiang-muslim-internments.html> [<https://perma.cc/86AJ-RCY6>] (reporting a letter sent by six U.N. officials and rights experts, including the Special Rapporteur on freedom of expression, to the Chinese government, arguing that the Xinjiang regulations were a violation of international law and urging that "those responsible be held accountable"); Rahim, *supra* note 3.

5. Maya Wang, *More Evidence of China's Horrific Abuses in Xinjiang*, *HUM. RTS. WATCH* (Feb. 20, 2020), <https://www.hrw.org/news/2020/02/20/more-evidence-chinas-horrific-abuses-xinjiang> [<https://perma.cc/JLX2-QZ5Q>] (detailing the latest updates since the organization's extensive 2018 report on the Chinese government's abuses in Xinjiang); *UN: Act to End China's Mass Detentions in Xinjiang*, *AMNESTY INT'L*, (Feb. 4, 2019), <https://www.amnesty.org/en/latest/news/2019/02/un-act-to-end-china-mass-detentions-xinjiang/> [<https://perma.cc/NSQ5-9XYD>] (urging the U.N. Human Rights Council to adopt a resolution establishing an international fact-finding mission in Xinjiang); Kenji Kawase, *NGOs Urge UN to Adopt Resolution on China's Human Rights Abuses*, *NIKKEI ASIA* (Jan. 30, 2019), <https://asia.nikkei.com/Politics/NGOs-urge-UN-to-adopt-resolution-on-China-s-human-rights-abuses> [<https://perma.cc/G99W-BFMX>] (announcing that thirty-seven NGOs, including PEN America, Free Tibet, the Network of Chinese Human Rights Defenders, and the World Uyghur Congress wrote an open letter to the U.N. Human Rights Council urging it to adopt a resolution condemning the PRC's human rights violations in Xinjiang).

6. James Leibold, *Opinion, Mind Control in China Has a Very Long History*, *N.Y. TIMES* (Nov. 28, 2018), <https://www.nytimes.com/2018/11/28/opinion/china-reeducation-mind-control-xinjiang.html> [<https://perma.cc/43Q9-J955>] (calling out China's actions in Xinjiang as "gross human rights

ever, what is often overlooked in discussions about Xinjiang among human rights advocates and Western politicians is that mass imprisonment without Western-style due process is not a novelty in China. In fact, forced labor has been used to punish Han Chinese and ethnic minorities for transgressions of state policy since the imperial system of centuries past.⁸ Though the Maoist practice of “Re-education through labor” (RTL or Re-education) received heavy internal criticism throughout the early 2010s and was formally abolished in 2013,⁹ Re-education as a national penal philosophy forms the foundation of the *laojiao* (劳教, education through work) and *laogai* (劳改, transformation through work) prison programs that have existed under general Chinese criminal law since 1949.¹⁰ Excluding Uighurs and other ethnic minorities detained in Xinjiang, there are some 1.6 million more inmates detained in the CCP’s prisons.¹¹

abuses”); James A. Millward, Opinion, *What It’s Like to Live in a Surveillance State*, N.Y. TIMES (Feb. 3, 2018), <https://www.nytimes.com/2018/02/03/opinion/sunday/china-surveillance-state-uighurs.html> [https://perma.cc/SR4F-D6T8] (discussing in detail the “[b]lanket repression in Xinjiang”).

7. E.g., Yu-Jie Chen, *China’s Challenge to the International Human Rights Regime*, 51 N.Y.U. J. INT’L L. & POL. 1179 (2019) (examining “Beijing’s current strategies to undercut the [work of the U.N. Human Rights Council] by seeking to distort relevant procedures, hamper the Council’s institutions, and erode international human rights norms”).

8. See DERK BODDE & CLARENCE MORRIS, LAW IN IMPERIAL CHINA EXEMPLIFIED BY 190 CH’ING DYNASTY CASES 41–42 (1967) (noting long-term servitude as a form of punishment).

9. Leibold, *supra* note 6; Sui-Lee Wee, *China to Abolish Labor Camps, Major Victory for Xi*, REUTERS (Nov. 15, 2013), <https://www.reuters.com/article/us-china-reform-legal/china-to-abolish-labor-camps-major-victory-for-xi-idUSBRE9AE0TV20131115> [https://perma.cc/8V55-C3L3]. Several cases involving allegations of torture and rape in the “Re-education through labor” (RTL) camps received significant media attention in the PRC. RTL had been put into place in 1957 under Mao Zedong and gave the police authority to sentence those who had committed misdemeanors and other minor crimes for up to four years’ confinement without a judicial trial. *Id.*

10. Minami Funakoshi, *China’s ‘Re-education Through Labor’ System: The View from Within*, ATLANTIC (Feb. 6, 2013), <https://www.theatlantic.com/international/archive/2013/02/chinas-re-education-through-labor-system-the-view-from-within/272913/> [https://perma.cc/BA4Q-787B].

11. SHIZHOU WANG, CRIMINAL LAW IN CHINA 227 (2017). A scholar, activist, and former *laogai* inmate, Harry Wu, estimates that the number of inmates working in prison camps is closer to six to eight million, consisting mostly of Han Chinese. Funakoshi, *supra* note 10.

This note contends that IHRL advocates would have better success with average Chinese citizens if they were equipped to parry the CCP's arguments for Re-education blow-for-blow with culturally relevant counterexamples from local history and philosophy. Contrary to conventional Western understanding and media coverage, China's behavior in Xinjiang and the nationwide *laogai* system is deeply anchored in select readings of Confucian philosophy and other indigenous principles of Legalism and therefore is widely supported by the Han Chinese public. The Confucian beliefs that (a) individuals can achieve perfection; (b) lack of education leads to barbarism and moral degradation; and (c) that the state should help people become virtuous in pursuit of a harmonious society enjoy firmly rooted historical and cultural legitimacy, and the CCP accordingly refers to these concepts in propaganda justifying its Xinjiang policy. This note posits that in order to counter the Party's narrative, human rights advocates should focus on showing the Chinese public and CCP officials how Beijing's policy in Xinjiang is not only dangerous according to Chinese historical precedent but also violative of a more nuanced understanding of the country's traditional morality. Confucius, who warned against the dangers of repressive government and its tendency to fuel hatred and popular uprisings, would look dubiously upon the Party's current tactics in the region and across the rest of the Mainland.¹² Confucian counterarguments to repression and examples of the pitfalls of arbitrary cruelty from Chinese history will prove more useful for human rights proponents than Western-oriented rights speech in order to win over Han Chinese hearts and minds. This note serves as a preliminary guide for how IHRL advocates can understand relevant examples from Chinese history and Confucian philosophy to further this goal.

First, in Section II, the note will provide a concise history of the Xinjiang region and its contemporary geo-political importance to the People's Republic of China (PRC). Section III underlines the key concepts from Confucianism and Legalism that animate the Party's messaging in Xinjiang, illuminating how Re-education could seem uncontroversial and even justified in the Chinese psyche. Sections IV and V respectively illus-

12. DELIA LIN, CIVILISING CITIZENS IN POST-MAO CHINA: UNDERSTANDING THE RHETORIC OF *Suzhi* 20 (2017).

trate three examples from Chinese history and three examples from Confucian discourse that IHRL advocates could leverage to counter CCP propaganda and human rights violations. Finally, Section VI suggests that Western IHRL champions consider the impact of Western colonialism on China and how it has influenced views of IHRL, as well as potential moral and relativist weaknesses of Western IHRL advocacy. Especially in the age of the “de-coupling” of Chinese political, technological, and cultural systems from those of the West,¹³ translating

13. “De-coupling” refers to the term that has gained popularity in academic and policy circles to describe the reversal of the deep integration between the Western and Chinese economies and societies that has taken place since the Reform & Opening (改革开放, *Gaige Kaifang*) of the Mainland in 1979. For instance, since 2016, both American and European policymakers have insisted upon the importance of establishing reliable internal supply chains for vital domestic products, such as medical supplies, drug treatments and defense weaponry. These calls have increased during the Covid-19 pandemic of early 2020, as the West found itself crippled by a shortage of personal protective equipment and reliant on China for deliveries of such supplies. See generally Keith Johnson & Robbie Gramer, *The Great Decoupling*, FOREIGN POL’Y (May 14, 2020), <https://foreignpolicy.com/2020/05/14/china-us-pandemic-economy-tensions-trump-coronavirus-covid-new-cold-war-economics-the-great-decoupling/> [https://perma.cc/CXC3-7JZJ] (discussing the history, realities, and implications of the de-coupling between China and the West). President Trump has also blocked Chinese companies from entering certain areas of the American market, prohibiting Chinese tech giant, Huawei, from competition for 5G-network contracts in the United States in 2020 and nixing Broadcom’s attempted acquisition of San Diego-based chipmaker Qualcomm in 2018, citing national security concerns. Cecilia Kang & Alan Rappoport, *Trump Blocks Broadcom’s Bid for Qualcomm*, N.Y. TIMES (Mar. 12, 2018), <https://www.nytimes.com/2018/03/12/technology/trump-broadcom-qualcomm-merger.html> [https://perma.cc/W97G-MRKW]. Canada, Australia, Singapore, France, Germany, and the United Kingdom have followed the United States’ lead in shutting Huawei out of their 5G markets, while Italy has sided with the PRC, allowing the company to compete. *America’s War on Huawei Nears Its End-game*, ECONOMIST (July 16, 2020), <https://www.economist.com/2020/07/16/americas-war-on-huawei-nears-its-endgame> [https://perma.cc/FA49-KXU7]; Guy Chazan & Nic Fildes, *Germany Crackdown Set to Exclude Huawei from 5G Rollout*, FIN. TIMES (Sept. 30, 2020), <https://www.ft.com/content/35197477-acef-4429-a1d8-71743ee8d8e3> [https://perma.cc/66AN-6F3G]. More recently, China has expelled over two dozen journalists from prominent American newspapers such as *The New York Times*, *The Wall Street Journal*, and *The Washington Post*, resulting in the U.S. and China both taking retaliatory action by ordering the respective closing of the other’s consulates in Houston and Chengdu. Marc Tracy, Edward Wong & Lara Jakes, *China Announces That It Will Expel American Journalists*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/>

human rights arguments into the local vernacular through a better understanding of Chinese history and context will be crucial to IHRL's long-term success in Xinjiang and the rest of PRC.¹⁴ Instead of disengaging or doubling down on IHRL concepts and Western-based political values that have failed to sway the vast majority of Han Chinese despite years of commercial and educational exchange since Reform and Opening in 1979, advocates should employ smart, conscientious localization of strategy and rhetoric.

II. HISTORY AND CONTEMPORARY IMPORTANCE OF XINJIANG

The Chinese struggle to control Xinjiang—literally “new frontier” in Mandarin—dates back over two thousand years to the times of the Han Dynasty,¹⁵ from which China's dominant

2020/03/17/business/media/china-expels-american-journalists.html [https://perma.cc/7XWP-D29M]; Emily Feng & Ryan Lucas, *China Orders U.S. to Close Its Consulate in Chengdu*, NPR (July 24, 2020), <https://www.npr.org/2020/07/24/894960595/china-orders-u-s-to-close-its-consulate-in-chengdu> [https://perma.cc/93JA-P7XP]. For more discussion on the effect of de-coupling on tech supply chains, see Lawrence J. Lau, *Opinion, US-China Tech War May Lead to Global Decoupling of Supply Chains—But There's a Silver Lining*, S. CHINA MORNING POST (Jan. 21, 2020), <https://www.scmp.com///article/3046791/us-china-tech-war-may-lead-global-decoupling-supply-chains-theres> [https://perma.cc/YM9D-W2RE]. For discussion of increasing differences between Western and Chinese political and economic systems, see Yuen Yuen Ang, *The Real China Model: It's Not What You Think It Is*, FOREIGN AFFAIRS (June 29, 2018), <https://www.foreignaffairs.com/articles/asia/2018-06-29/real-china-model> [https://perma.cc/A9S6-2HLH].

14. See SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006) (explaining how “the localization of human rights is part of the vastly unequal global distribution of power and resources that channels how ideas develop in global settings and are picked up or rejected in local places.”). See generally EVA PILS, *HUMAN RIGHTS IN CHINA: A SOCIAL PRACTICE IN THE SHADOWS OF AUTHORITARIANISM* (2017) (noting emphasis by the human rights advocates on the importance of engaging with the vernacular human rights discourse); LISBETH ZIMMERMANN, *GLOBAL NORMS WITH A LOCAL FACE: RULE-OF-LAW PROMOTION AND NORM-TRANSLATION* (2017) (describing the interaction between norm promoters and domestic actors).

15. Alessandro Rippa, *Re-Writing Mythology in Xinjiang: The Case of the Queen Mother of the West, King Mu, and the Kunlun*, 71 CHINA J. 43, 47 (2014). JAMES MILLWARD, *EURASIAN CROSSROADS: A HISTORY OF XINJIANG* 23–24 (2007).

ethnic group takes its name.¹⁶ In 59 B.C.E., the Han Dynasty established a Military Viceroy's Office in the region to fortify the empire's Western extremities against the Xiongnu, a pastoral nomadic tribe.¹⁷ From this Xinjiang outpost, the Han Dynasty developed trading relationships with the distant civilizations of Ancient Persia, Greece and Rome via the famed Silk Road.¹⁸ Starting in 120 B.C.E., a string of victories against the Xiongnu allowed the Han Chinese to advance into the Gansu corridor and establish *tuntian* (屯田, agricultural military colonies).¹⁹ By 60 B.C.E., the Han had reached the Tarim Basin, where they replaced the Xiongnu governing structure with an entity known as the "Protector General."²⁰ Although further evidence as to the extent of the Han Chinese presence in Xinjiang remains unavailable due to lack of historical records, early China's relationship with the region as a frontier and military, trading, and agricultural outpost on the periphery of the Han Empire remains undisputed.

From approximately the beginning of the third century C.E. onward, however, the locus of authority in Xinjiang shifted back into the hands of local indigenous groups, who mostly resisted infrequent contests for control from the inte-

16. Although there are 56 officially recognized minority groups in the People's Republic of China, Han Chinese make up 92% of the population. *Why China's Communists Recognise Just 56 Ethnic Groups*, *ECONOMIST* (July 15, 2017), <https://www.economist.com/china/2017/07/15/why-chinas-communists-recognise-just-56-ethnic-groups> [<https://perma.cc/B599-U6DM>]. Whereas the Han population comprises over 1 billion people, Uighurs in the PRC amount to an estimated 10 million. *Chinese Ethnic Groups: Overview Statistics*, UNC UNIV. LIBRS. (Nov. 2, 2020), https://guides.lib.unc.edu/china_ethnic/statistics [<https://perma.cc/-8JPK>].

17. The Xiongnu, later called the Huns by Roman historians, maintained a nomadic federation along the border of the agrarian Chinese dynasties. Their presence drove the first emperor Qin shi huangdi (秦始皇帝) in 214 B.C.E. to extend the preliminary foundations of the Great Wall in 214 B.C.E. HYUN JIN KIM, *THE HUNS* 20 (2015). The Xiongnu maintained a cavalry of between 300,000–400,000 mounted archers and reached the height of their power around 200 B.C.E. Ping-Ti Ho, *In Defense of Sinicization: A Rebuttal of Evelyn Rawski's 'Reenvisioning the Qing'*, 57 *J. ASIAN STUD.* 123, 129 (1998).

18. See Dan Levin, *A Desert Blooms Along China's Silk Road*, *N.Y. TIMES* (Oct. 13, 2010), <https://www.nytimes.com//10/17/travel/17explorer.html> [<https://.cc/-GTF9>] (noting that Xinjiang was "at the heart of the Silk Road").

19. MILLWARD, *supra* note 15, at 21–22.

20. *Id.* at 22.

rior Han Chinese and later the Manchus. In contrast to the PRC's position that Chinese dynasties have enjoyed uninterrupted sovereignty over Xinjiang since the Han Dynasty, recent scholarship has highlighted that Han Chinese control over Xinjiang remained "intermittent" until the founding of the PRC in 1949.²¹ After the fall of the Han Dynasty in 220 C.E. and the resulting chaos of the Three Kingdoms era,²² Han Chinese control over the empire's westernmost provinces lapsed until the Tang Dynasty (618–907 C.E.) reestablished Han Chinese dominance in Xinjiang.²³ Although the Tang enjoyed relatively firm control over the region, the Dynasty's rule relied on relationships with local Turkic elites, often facilitated through marriages and the adoption of steppe customs such as the Soghdian whirling dance, Kuchean music, and residence in yurts.²⁴ Contrary to the CCP's assertion that the region has been an integral part of China since the Stone Age,²⁵ Xinjiang was only reconquered by the Qing Dynasty's Qianlong Emperor in 1759 and then officially made an imperial province in 1884.²⁶ Therefore, according to the historical record, the Han Chinese lacked control of Xinjiang for large stretches of time from the third century to the nineteenth century: first, from the fall of the Han Dynasty in 220 C.E. to the beginning of

21. Notwithstanding the historical record to the contrary, the history museum in Urumqi that the national government opened in 1953 claimed in a July 2011 exhibition that "Xinjiang has been an inalienable part of the territory of China" from "the Stone Age to the Qing dynasty." Rippa, *supra* note 20, at 44–45.

22. The Three Kingdoms era (220–80 C.E.) refers to a tumultuous period of Chinese history during which warlords from the Shu, Wei, and Wu kingdoms battled to unify the Middle Kingdom. *Three Kingdoms*, BRITANNICA, <https://www.britannica.com/event/Three-Kingdoms-ancient-kingdoms-China> [<https://.cc/-KK5C>] (last visited Nov. 16, 2020).

23. MILLWARD, *supra* note 15, at 32.

24. *Id.*

25. Rippa, *supra* note 15, at 45. *Contra* MILLWARD, *supra* note 20, at 37 ("Although the Tang dynasty survived the An Lushan Rebellion, it would never again extend power as far west as Xinjiang. In fact, there would not be direct rule over Xinjiang by a China-based state for almost exactly one thousand years.").

26. Jia Jianfei, *Whose Xinjinag? The Transition in Chinese Intellectuals' Imagination of the "New Dominion" During the Qing Dynasty* 3 (Harvard-Yenching Inst. Working Paper Series, 2011), https://harvard-yenching.org/sites/harvard-yenching.org/files//%20Jianfei_Whose%20Xinjiang.pdf [<https://perma.cc/299Y-BJET>]; Ho, *supra* note 23, at 148.

Tang ascendance in 630 C.E., a period of 400 years, and second, from the end of the Tang presence in the region in approximately 790 C.E. to the Qianlong Emperor's reconquest of Xinjiang in 1759, *nearly an entire millennium*.²⁷ During this one thousand year gap, neither the Song (960-1279 C.E.) nor the Ming (1368-1644 C.E.), two highly successful Han Chinese dynasties, even attempted to obtain control of Xinjiang.²⁸ The reality that Han Chinese control over the region has always been contested undoubtedly underpins the CCP's insecurity about the region today and its promotion of partially falsified, biased history.

In addition to the fact that Xinjiang's firm incorporation into the rest of Mainland China is a relatively recent historical development,²⁹ China's defensiveness about the region is further driven by its desire to reassume its historical position as a great world power.³⁰ Furthermore, one cannot underestimate the impact of European imperialism in China on the CCP's approach to governance. From Britain's victory in the First Opium War in 1842 to Mao Zedong and Chiang Kai-shek's rebellion against the Japanese occupation from 1937 to 1945,³¹ the Chinese saw their ability to determine their own political destiny undermined by coercive and violent foreign presences. Opposition to outside forces has served as a legitimizing factor

27. MILLWARD, *supra* note 15, at 37.

28. See Akhilesh Pillalamarri, *Troubled Today, China's Xinjiang Has a Long History*, DIPLOMAT (July 30, 2015), <https://thediplomat.com/2015/07/troubled-today-chinas-xinjiang-has-a-long-history/> [<https://perma.cc/JP52-UQ8X>] (explaining that "the Song Dynasty was relatively small and powerless to protect the city-states" in Xinjiang); JAMES MILLWARD, *THE SILK ROAD: A VERY SHORT INTRODUCTION* 111-12 (2013) (noting that "[t]he Ming dynasty had no directly military presence in Central Asia").

29. See Ho, *supra* note 17, at 149 (noting that China did not "prove[] its ability to assert authority of its Inner Asian territories" until the 1950s).

30. See *generally* HOWARD FRENCH, *EVERYTHING UNDER THE HEAVENS: HOW THE PAST HELPS SHAPE CHINA'S PUSH FOR GLOBAL POWER* (2017) (exploring "historic Chinese reflexes" to "better inform our sense of how China might exercise its growing national power in the decades ahead."); CARL MINZER, *END OF AN ERA: HOW CHINA'S AUTHORITARIAN REVIVAL IS UNDERMINING ITS RISE* (2018) (discussing the socioeconomic problems underlying China's recent economic achievements).

31. See FRENCH, *supra* note 30, at 13-52 (discussing foreign occupations in China in the chapter "National Humiliation"); MINZER, *supra* note 30 (providing a historic background for some of the social unrest and socioeconomic problems facing contemporary Chinese officials).

for the CCP: After publicly positioning itself as China's liberator from Japanese occupation in 1945, the Party has since continually stoked nationalist sentiment to solidify its popularity. Displays of anti-Japanese and anti-Western propaganda, such as the 1994 publication of a poster set commemorating "victory" over Japan in World War II and the use of slogans such as *Women zen neng wangdiao* (我们怎能忘掉, How Can We Forget), remain routine tactics for the CCP today.³² For instance, the Party framed the 2019–2020 pro-democracy protests in Hong Kong as products of a Western plot to undermine China's sovereignty, reminiscent of nineteenth century interference.³³ Accordingly, sensitivity towards the lingering impact of Western colonialism on the national psyche is crucial in dealing with the CCP's responses to Xinjiang and the Chinese public's sentiments about the propriety of the government's actions in the region.

Furthermore, Xinjiang is an important economic region, serving as the vital gateway for imports and exports between China and Central Asia and containing 20% of China's oil reserves, 38% of its coal reserves, and 25% of its natural gas reserves.³⁴ By 2020, Xinjiang is expected to produce 35 million

32. DAVID SCOTT, *CHINA AND THE INTERNATIONAL SYSTEM 1840-1949: POWER, PRESENCE, AND PERCEPTIONS IN A CENTURY OF HUMILIATION* xi (2008); James Gorrie, *China's Nationalist Propaganda Stokes Anti-Hong Kong Passions*, EPOCH TIMES (Aug. 22, 2019), https://www.theepochtimes.com/chinas-nationalist-propaganda-stokes-anti-hong-kong-passions_3051980.html [<https://perma.cc/WNY4-LH2N>] (remarking that anti-Western, anti-American propaganda has been a "common theme" in China's state-controlled media for decades).

33. See Gorrie, *supra* note 32 ("Of course, anti-West, anti-American propaganda has been a common theme in China's state media for decades. China's state-run propaganda blames the Hong Kong protests on 'Western influences.'"); see also Steven Lee Meyers & Paul Mozur, *China is Waging a Disinformation War Against Hong Kong Protestors*, N.Y. TIMES (Aug. 13, 2019), <https://www.nytimes.com/2019/13/world/asia/hong-kong-protests-china.html> [<https://perma.cc/6EMW-JPUN>] (describing how Chinese officials manipulated the context of images and videos to make it seem like the demonstration were provoked by foreign agents). Apparently, the CCTV has been promoting the hashtag "What is America Up To?" via Weibo (essentially the Chinese equivalent of Facebook). Kyle Weiss, *Seek Truth from Facts (实事求是): How Foreign Disinformation Emerges from Domestic Propaganda* 27 (Apr. 26, 2020) (M.A. thesis, Columbia University) (on file with author).

34. Edward Wong, *China Invests in Region Rich in Oil, Coal and Also Strife*, N.Y. TIMES (Dec. 20, 2014), <https://www.nytimes.com/2014/12/21/world/>

tons of crude oil, a 23% increase from its performance in 2012, and China's current five-year economic plan designates the region as one of the country's "five energy bases."³⁵ President Xi Jinping, who under the current constitution will serve indefinitely as CCP Chairman, has touted Xinjiang as a place of critical importance to the success of China's Belt and Road Initiative (BRI), a program through which the country plans to invest over \$1 trillion by 2027.³⁶ China also relies upon Xinjiang to symbolically link the BRI to the historic Silk Road, the ancient trading route through Central Asia that linked the civilizations of the East to the empires and city-states of Europe. Indeed, much of the money the PRC plans to invest through the BRI will go to the "China-Pakistan Economic Corridor," consisting of Central Asian nations that neighbor Xinjiang.³⁷ For these reasons, the CCP regards Xinjiang as indispensable to both China's future economic livelihood and its ability to regain stronger regional influence in Eurasia.

Lastly, the CCP views the potential of Xinjiang being wrested from the PRC's territorial control as an unacceptable threat, especially when considered in relation to the situations in Hong Kong, Tibet, and Taiwan. Although separatist movements seem to have quieted in Tibet in recent years after a spike in violence in the 1990s and early 2000s,³⁸ as of early 2020 Hong Kong and Taiwan have arguably been more politically and culturally isolated from the Mainland than ever before. In Hong Kong, despite the CCP taking advantage of the Covid-19 outbreak to crack down on and arrest vast

asia/china-invests-in-xinjiang-region-rich-in-oil-coal-and-also-strife.html [https://perma.cc/AY3V-TXDN]; Rémi Castets, *What's Really Happening to the Uighurs in Xinjiang?* NATION (Mar. 19, 2019), <https://www.thenation.com/article/china-xinjiang-ughur-oppression/> [https://perma.cc/RW4J-NA6L].

35. Wong, *supra* note 34.

36. Andrew Chatzky & James McBride, *China's Massive Belt and Road Initiative*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative> [https://perma.cc/NU8S-KWU4] (Jan. 28, 2020).

37. *Id.*

38. Robert Farley, *Has the 'Free Tibet' Movement Fizzled Due to China's Rise?* DIPLOMAT (Mar. 1, 2019), <https://thediplomat.com/2019/03/has-the-free-tibet-movement-fizzled-due-to-chinas-rise/> [https://perma.cc/MP33-972C].

swathes of pro-democracy leaders,³⁹ opposition to Beijing remains strong, widespread, and bolstered by a resilient local organizing infrastructure and social media strategy.⁴⁰ In Taiwan, President Tsai Ing-wen, who has supported the Hong Kong protestors and rejected the possibility of political reunification with the Mainland, won a second term in January 2020 by the highest tally of recorded votes for a presidential candidate since the institution of popular sovereignty in Taiwan in 1996.⁴¹ Against this backdrop, the CCP undoubtedly worries that the separation of Xinjiang from the Mainland—despite the currently unlikelihood of that possibility—would further propel Hong Kong and Taiwan from its grasp, setting a dangerous precedent for Chinese sovereignty.

III. CONFUCIANISM, THE VIRTUES OF EDUCATION, AND TODAY'S CCP

However repugnant to contemporary IHRL the Chinese program of Re-education and internment in Xinjiang may seem, certain readings of traditional Confucian ideas about

39. Elaine Yu & Austin Ramzy, *Amid Pandemic, Hong Kong Arrests Major Pro-Democracy Figures*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04//asia/hong-kong-arrests.html> [<https://perma.cc/M6B9-BU6T>].

40. See James Pomfret & Claire Jim, *Exclusive: Hong Kongers Support Protester Demands; Minority Wants Independence from China*, REUTERS (Dec. 31, 2019) <https://www.reuters.com/article/us-hongkong-protests-poll-exclusive/exclusive-hong-kongers-support-protester-demands-minority-wants-independence-from-china-reuters-poll-idUSKBN1YZ0VK> [<https://perma.cc/ZLC8-P5FS>] (reporting that 59% of city residents support anti-CCP protests); Chris Horton, *Hong Kong's Protesters Are Outfoxing Beijing Worldwide*, ATLANTIC (Sept. 29, 2019), <https://www.theatlantic.com//archive/2019/09/hong-kong-public-opinion-beijing/599059/> [<https://perma.cc/T4ME-Q3GU>] (noting that Hong Kong protestors had succeeded in mobilizing both popular Western and Asian celebrities, governments and NGOs, and audiences on Twitter, using crowdfunding websites and other social media venues to support their cause); Ellen Ioanes, *Hong Kong Activists Use 'Pokémon Go' and Tinder to Organize As Police Crackdown on Protests*, BUS. INSIDER (Aug. 7, 2019), <https://www.businessinsider.com/hong-kong-protesters-tinder-and-apple-airdrop-to-organize-2019-8> [<https://perma.cc/ZQ7M-A9QP>] (noting that when police tried to ban a demonstration in a suburban neighborhood, protesters claimed they met up to play “Pokémon Go”).

41. Chun Han Wong et al., *Taiwanese President Who Challenged China Claims Re-Election Victory*, WALL ST. J. (Jan. 11, 2020), <https://www.wsj.com/articles/taiwans-president-incumbent-who-challenged-china-set-to-win-re-election-11578748281> [<https://perma.cc/BZ8N-75DT>].

self-improvement and the role of the state in education seem to support the CCP's treatment of the Uighurs and other ethnic minorities. Because of this, some Chinese assert that Western outrage towards the Re-education program reflects European and American ignorance of the history and culture of China.⁴² As the Xinjiang Communist Party Committee Deputy Propaganda Chief told foreign reporters in January 2019, "[o]nly with a deeper understanding of the past can you understand the measures we have taken today."⁴³ Indeed, many Chinese may genuinely feel that the CCP measures in Xinjiang constitute a program of sinicization that is not only beneficial to the Uighurs' moral development, but also necessary to the country's social and political wellbeing.

From the naissance of Confucian thought in the sixth century B.C.E, self-improvement through education has been one of the philosophy's foundational pillars.⁴⁴ According to Confucianism, the role of an upstanding individual is to cultivate benevolence and continually employ his talents in service of the community and the state.⁴⁵ In contrast to Western liberalism, which encourages individuals to pursue their own ideas of personal growth to find happiness, Confucianism leaves it to the state to decide what constitutes positive spiritual and social development. As Confucian scholar Tu Wei-ming explains, "humanity, in the Confucian perspective, can never be the private possession of a single individual, self-realization entails the task of bearing witness to that dimension of humanity

42. See Chi Zhang, *One Uighur Man's Journey Goes Viral*, FOREIGN POL'Y (May 14, 2014), <https://foreignpolicy.com/2014/05/14/one-uighur-mans-journey-goes-viral/> [<https://perma.cc/27MA-E82X>] (translating an article by Kurbanjan Samat, a thirty-two-year-old ethnic Uighur photographer working for CCTV: "Even Chinese don't have a good understanding of Xinjiang: how could foreigners? Many foreigners have made up stories or hyped up small matters into big ones and use those lies as a way to make a living for themselves.").

43. Ben Blanchard, *China Says Pace of Xinjiang 'Education' Will Slow, But Defends Camps*, REUTERS (Jan. 6, 2016), <https://www.reuters.com/article/us-china-xinjiang-insight/china-says-pace-of-xinjiang-education-will-slow-but-defends-camps-idUSKCN1P007W> [<https://perma.cc/39EM-HRSG>].

44. Tu Wei-ming, *Pain and Suffering in Confucian Self-cultivation*, 34 PHIL. EAST & WEST 379, 379 (1984).

45. Hugh T. Scogin Jr., *Tradition and Law in China: Review of Wejen Chang's In Search of the Way: Legal Philosophy of the Classic Chinese Thinkers*, 49 N.Y.U. J. INT'L L. & POL. 1105, 1110 (2017).

which is *communal*.”⁴⁶ In pursuit of societal stability, i.e. *he* (和, harmony) or what Confucius and Mencius called the *Da Tong* (大同, Great Peace), the emperor guides his subjects by living as the example of perfect benevolence, or *ren* (仁). The people, naturally inspired by their leader’s gracious conduct and eager to sustain the benefits that his stewardship has conferred upon them, act in accordance with state policy and strive to live up to the emperor’s ideal.⁴⁷

Confucius believed the Great Peace could only be achieved once every person in China had quashed his selfish, bestial instincts and adopted a lifestyle anchored in *ren* and the continual practice of ritual propriety, *li* (礼).⁴⁸ According to the Book of Rites (礼记 or *lijì*), the repression of barbarism was a demanding yet potentially rewarding process:

Li starts with dignified behavior and posture, proper facial expressions and compliant language. . . . Then [one is able to] straighten the relationship between ruler and subjects, to be kind to the father and son, get along with the old and the young. . . . Therefore when filial piety, respect for older brothers, loyalty and deferential submission are all established, a human being becomes a [true] human being. After a human being becomes a [true] human being, he can rule other human beings.⁴⁹

A far cry from the Jeffersonian proposition in the American Declaration of Independence that all men are created equal, Confucius distinguished six levels of humanity individuals could achieve depending on the extent to which they cultivated their *li*: first, the base and worthless man, or *xiaoren* (小人); second, the mediocre man; third, the man of learning; fourth, the refined man, or *junzi* (君子); fifth, the eminent man; and sixth, the highest level of the saint, or *sheng ren* (圣人).⁵⁰ For Confucius and his celebrated disciple Mencius,

46. Tu, *supra* note 44, at 381 (emphasis added).

47. *See id.* (theorizing that people should be “grateful” for what the “cultural heroes” have done and “for the standard of inspiration that they have set up for subsequent generations.”).

48. *See* LIN, *supra* note 12, at 19–20 (“Confucius endeavours to create a system that would make adherence to hierarchical social relations and practice of *li* natural and sincere, hence ‘harmonious’.”).

49. *Id.* at 29.

50. *Id.* at 32.

unlike men of learning from categories three through five, who through their practice of ritual propriety learned the wisdom of discipline and benevolence, ordinary, mediocre people were driven by material needs such as food, housing, procreation, and libation.⁵¹ Despite their tendency to bow to these carnal desires, however, even the lowliest individual could rise above these predispositions to achieve moral greatness and become a *junzi* or even a *sheng ren*. All that was required to achieve this transformation was dedication to the performance of the rites and instruction from qualified teachers.⁵²

Although the possibility for self-cultivation provides an optimistic paradigm throughout Confucian teaching, several prominent Chinese scholars, particularly Xunzi, Han Fei Zi, and even Mencius warned leaders about the danger of leaving the masses to run amok without proper instruction in *li*. Xunzi, a highly regarded Confucian philosopher of the Warring States period who lived three centuries after his master in the third century B.C.E., described human beings as “crooked timber” who needed to be straightened out through proper instruction in order to achieve social harmony.⁵³ Xunzi took a particularly negative view of humanity’s innate condition, arguing that every individual’s base character was evil.⁵⁴ However, in line with his Confucian disposition, Xunzi believed in the transformative power of education. Although individuals left in the state of nature would become corrupted and destructive to themselves and society, exemplary teaching could refine people’s *suzhi* (素质, innate qualities) to the point where they could one day become social leaders.⁵⁵ Even Mencius, who believed that human beings were innately good, admitted that without education people would behave like “birds

51. See WEJEN CHANG, *IN SEARCH OF THE WAY: LEGAL PHILOSOPHY OF THE CLASSIC CHINESE THINKERS 193–220*, 203 (2016) (“The way of the common people is this: once they have sufficient food, warm clothes and comfortable lodging but no education their behaviour will be close to that of birds and beasts.”).

52. See *id.* at 203 (“Mencius said, ‘What makes a gentleman different from others is the way he keeps his heart. A gentleman keeps his heart right by following the principles of benevolence and the rites.’”).

53. Leibold, *supra* note 6.

54. CHANG, *supra* note 51, at 304.

55. LIN, *supra* note 12, at 21.

and beasts.”⁵⁶ At the harshest extreme, Han Fei Zi,⁵⁷ a Legalist whose work greatly influenced the administrative apparatus of the nominally Confucian Han and later dynasties, did not assign much hope to the idea that base human beings could be improved through the practice of ritual propriety. For Han Fei Zi, people’s *suzhi* was more or less fixed from birth and the role of the state was to give reward and punishment (刑, *xing*) to steer people in the right direction and maintain social harmony.⁵⁸ He thought that the ordinary person’s mind was as “useless as that of an infant” and encouraged leaders not to concern themselves with the uninformed public’s opinion of their policies.⁵⁹ According to Han Fei Zi, government that pandered to the masses would lead to undisciplined conduct and chaos.

To combat the threat of a disorganized, unruly, and even barbaric social breakdown, Confucianism placed the responsibility of strengthening the moral fiber and *li* of the nation in the hands of the emperor and his officials. In the words of Delia Lin, a scholar of ancient Chinese political thought from the University of Melbourne, Confucians believe it is the “right and responsibility of the state and enlightened elites to reveal innate deficiencies of citizens and to encourage transformation of originally defective persons into fully developed, competent and responsible citizens.”⁶⁰ In other words, the emperor and his bureaucratic advisers would guide society on the most efficient and peaceful pathway to the Great Harmony (*Da Tong*).

Fortunately for Chinese leaders, Confucianism left broad room for imperial interpretation as to what kinds of methods would be appropriate for *suzhi jiaoyu* (素质教育, instruction in moral quality improvement), including punishment. Strikingly, even Mencius, who is often presented as the most benign of Confucian scholars, implied that there might be a place for State-imposed punishment in pursuit of national

56. CHANG, *supra* note 51, at 203.

57. Han Fei Zi was a pre-Qin Dynasty philosopher active from 221 B.C.E. to 206 B.C.E.

58. See CHANG, *supra* note 51, at 372 (“The law of our state rewards those who are meritorious and punishes those who are guilty. . . . To reward people regardless of whether they have merit is the way leading to disorder.”).

59. *Id.* at 364–65.

60. LIN, *supra* note 12, at 60.

goals. Tu Wei-ming reads the Mencian texts to further a position that being human is “as much a responsibility as a privilege,” and therefore, as Mencius wrote, “suffer[ing,] starvation and hardship” could “shake [a man] from his mental lassitude, toughen his nature and make good his deficiencies.”⁶¹ Although Confucius himself did warn that a ruler’s violent treatment of his people would “only make the inferior attempt deception . . . or worse, defiance and rebellion,” he stressed that the state should ultimately “lead the whole nation to practice *li* to cultivate perfect virtues . . .”⁶² Accordingly, the Great Master also reminded his audience that transgression of the *li* would not be tolerated—an individual who stepped out of line must be “banished” and regarded as a “scourge.”⁶³

Given this background and the continued pervasiveness of Confucian teaching in contemporary China,⁶⁴ the CCP’s treatment of the Uighurs in Xinjiang and the Chinese public’s general approval of the Re-education program becomes easier to understand. Many observers of the CCP’s actions in Xinjiang have noted the Party’s increased use of Confucian rhetoric in both its domestic and foreign messaging about Re-education.⁶⁵ However, the Party’s attitude towards the Great Sage and his disciples has not always been so sanguine. Initially, after the founding of the PRC in 1949, Chairman Mao had Con-

61. Tu, *supra* note 44, at 379.

62. LIN, *supra* note 15, at 20.

63. *Id.* at 27.

64. Nearly all Chinese students read the writings of Confucius, Mencius, Xunzi and Zhu Xi as part of the CCP’s mandatory curriculum. The CCP has also sponsored the opening of Confucius Institutes (CIs) in both the United States and Europe. At their peak in 2004, the United States hosted as many as 90 CIs around the country. Paula Marantz Cohen, *Confucianism in China Today: An Ancient Philosophy Makes a Comeback*, AM. SCHOLAR (Dec. 4, 2012), <https://theamericanscholar.org/-china-today> [https://perma.cc/MK9Y-7VM7]; see also Elizabeth Redden, *Closing Confucius Institutes*, INSIDE HIGHER ED (Jan. 9, 2019), <https://www.insidehighered.com/news/2019/01/09/colleges-move-close-chinese-government-funded-confucius-institutes-amid-increasing> [https://perma.cc/SF3P-QBUL].

65. See Leibold, *supra* note 6 (noting that Re-education camps embody the Chinese state’s traditional paternalistic attitude and the Confucian belief that “humans are perfectible.”); See generally LIN, *supra* note 15, at 1–4 (describing the *Suzhi* concept’s discursive power in the domain of governance).

fucius denounced as one of the “Four Olds,”⁶⁶ a vestige of feudalism preventing China from launching itself into the modern era as a great nation. In fact, during the 1966–76 Cultural Revolution, CCP Red Guards tore through Confucius’ hometown of Qufu, in the Shangdong province, and vandalized his gravesite, exhuming the bodies of Confucius’ relatives and hanging them from trees.⁶⁷

Despite its former antipathy, the Party has demonstrated a nearly 180-degree turn in its attitude towards Confucius, holding an official ceremony on his birthday each year.⁶⁸ The Party now adopts Confucian ideals to support its own policies, such as rural revitalization for provinces like the northeastern Heilongjiang (黑龙江): A Central Committee communiqué on one such program declared that its aim was to “raise the ideological and moral *suzhi* of Chinese peasants in order to refresh and revise their simple and honest character.”⁶⁹ Continuing in this fashion, after the deadly July 2009 riot in Urumqi that killed nearly 200 Han Chinese bystanders, the People’s Armed Police (PAP) flooded the Xinjiang region, placing banners promoting “ethnic unity,”⁷⁰ propaganda suggesting that following CCP Re-education policies will lead to Confucian *Da Tong*. Within the Re-education prisons, Uighurs and other internees have been forced to study Confucian texts, chant Party slogans, and give thanks to Xi Jinping before meals.⁷¹ The Communist Party Youth League has explained that the Re-education facilities are meant to “treat and cleanse [improper thinking] from [Uighurs’ and other ethnic minorities’] brains.”⁷² Finally, local Party officials have described the role

66. Joy Lam, *China’s Revival of Confucianism*, USC US-CHINA INST. (Sept. 18, 2008), <https://china.usc.edu/chinas-revival-confucianism> [<https://perma.cc/BSU5-5NQF>].

67. Gabrielle Jaffe, *China’s Enthusiastic Re-embrace of Confucius*, ATLANTIC (Oct. 7, 2013), <https://www.theatlantic.com/china/archive/2013/10/chinas-enthusiastic-re-embrace-of-confucius/280326/> [<https://perma.cc/6NUR-99AP>].

68. *Id.*

69. Leibold, *supra* note 6.

70. Rian Thum, *China’s Mass Internment Camps Have No Clear End in Sight*, FOREIGN POL’Y (Aug. 22, 2018), <https://foreignpolicy.com/2018/08/22/chinas-mass-internment-camps-have-no-clear-end-in-sight/> [<https://perma.cc/CK8A-W9NY>].

71. *Id.*

72. *Id.*

of the camps as “spraying chemicals on crops to kill weeds” and “eradicating tumors,” while the CCP-controlled *Global Times* paper has praised the Party for pursuing “all measures” for the sake of “stability.”⁷³

The CCP deliberately invokes such Confucian narratives to assuage doubt in the minds of average Han Chinese about the moral propriety of its actions in Xinjiang. An individual who grew up hearing the relentless repetition of Confucian principle in the PRC school system is bound to be at least somewhat persuaded by the Party anchoring the morality of its actions in this terminology. Although to Westerners this language might sound like the self-righteous justification of a cruel, despotic regime, the importance of the Confucian underpinnings of Chinese policy in Xinjiang should not be overlooked as mere window-dressing by IHRL advocates.

IV. OPPOSING RE-EDUCATION WITH CHINESE HISTORY

Having understood how the CCP marshals certain tenets of Confucianism and fictionalized narratives of Chinese history to rally public support for its policies in Xinjiang, Western advocates should be prepared to meet these arguments on their own terms. Counterexamples from China’s own history may be used to encourage civilians and even government officials to reevaluate the wisdom of CCP strategy in the region. As this section will further explain, human rights advocates and Western government officials seeking to benefit from a more localized, culturally resonant strategy of IHRL promotion should consider referencing relevant historical moments: first, the short-lived reign of the mercurial First Emperor Qin shi huang; second, the relatively tolerant and successful governance strategies of the Tang and early Qing dynasties in Xinjiang; and third, the failures of the Cultural Revolution. These instances, drawn directly from China’s own history, demonstrate how the Party’s current approach in Xinjiang may be profoundly misguided and self-defeating.

The first useful point for human rights advocates is that the Chinese public already has a deeply rooted understanding of the dangers of authoritarianism, a lesson gleaned from the abrupt rise and fall of the First Emperor Qin shi huang from

73. *Id.*

221 B.C.E to 210 B.C.E. Although many subsequent emperors invoked Qin's Legalist philosophy and policies during times of unrest,⁷⁴ the behavior of the First Emperor has been criticized by Chinese historians since the second century B.C.E. as an example of the assured damnation of leaders who trample upon the wellbeing of their people.⁷⁵ The First Emperor was no Confucian himself—he notably had 460 Confucian scholars buried alive in 212 B.C.E., according to the Han Dynasty historian Sima Qian (司马迁).⁷⁶ Yet as much as Confucianism since the Han revival has presented itself as entirely different and more humane than the Legalism practiced by Qin shi huang,⁷⁷ the two philosophies nevertheless share an important ideological emphasis on the importance of rules. The Han emperors, who ruled over China for nearly four prosperous centuries before the chaos of the Three Kingdoms (220 C.E. to

74. Collective punishment, for example, was revitalized by Qianlong during the literary proscription and by the PRC under Mao during the Cultural Revolution. Today, one might argue that the house arrest of family members of individuals accused of breaking Chinese law constitutes a softer form of collective punishment. See Jerome Cohen, *Who Gets Punished?: Sons and Daughters of Rights Lawyers—Collective Punishment in China*, JERRY'S BLOG (Oct. 20, 2015), <http://jeromecohen.net/jerrys-blog/2015/10/20/who-gets-punished-sons-and-daughters-of-rights-lawyers-collective-punishment-in-china> [<https://perma.cc/-H3SE>] (reporting de facto collective punishment cases, such as denying the son of a human rights lawyer permission to leave China to pursue overseas education). See also Harrison E. Salisbury, *In China, 'A Little Blood'*, N.Y. TIMES (June 13, 1989), <https://www.nytimes.com/06/13/opinion/in-china-a-little-blood.html> [<https://perma.cc/6X6C-RSS8>] (recounting the Red Guard's cruelty against then-student Deng Pufang, the son of suspected capitalist sympathizer).

75. One of the most prominent Chinese scholars to initially criticize Qin-shi huang was Jia Yi (贾谊), a Confucian of the succeeding Han dynasty who lambasted the first emperor for not following the principle of *ren* (仁, benevolence). Jia Yi asserts that it was forced labor on great mausoleums and the Great Wall and disproportionate collective punishments that led to popular rebellion and the downfall of the Qin only two decades after its establishment. W. M. THEODORE DE BARY & RICHARD LUFRANO, *SOURCES OF CHINESE TRADITION, VOLUME I: FROM EARLIEST TIMES TO 1600* 228–29 (2d ed. 2000).

76. SIMA QIAN, *RECORDS OF THE GRAND HISTORIAN* 68–69 (Burton Watson trans., 1996); see also DE BARY & LUFRANO, *supra* note 75, at 209.

77. The founder of the Han Dynasty (206 B.C.E. to 220 C.E.), Liu Bang, quickly emphasized that his regime was different from the Qin. Speaking of how the people had “suffered beneath the harsh laws” of the first emperor, he abolished all of the laws of the Qin except for capital punishment for murder and proportionate punishment for theft. See DE BARY & LUFRANO, *supra* note 75, at 227, 233–34.

280 C.E.), actually preserved much of the structure and substance of the Qin government.⁷⁸ Although Han rulers nominally transformed the Qin Dynasty idea of *fa* (法, laws) into Confucian *li* (礼, rites/principles) and positioned themselves as the benefactors of the people, Han emperors were no more tolerant of transgressions of the imperial will than their Qin predecessors.⁷⁹ Importantly, however, and perhaps key to the dynasty's longevity, the Han did eventually emphasize the Confucian concept of benevolence more than the Legalists had under Qin shi huang. Indeed, Sima Qian recorded that Emperor Wen abolished all corporeal and collective punishments—including amputations, slicing and branding—in favor of the more benign practice of thwacking with a large stick upon the insistence of his daughter, a dévotée of Confucian texts.⁸⁰ In any case, the Qin Dynasty is remembered in Chinese history for the lesson that “terror and strength alone could never rule the world [i.e. China].”⁸¹

Secondly, the Tang and early Qing dynasties' successful multicultural approach to the governance of Xinjiang undermines the necessity of the current CCP policy. Although Xinjiang was formally a “protectorate” under the Tang dynasty from approximately 650 to 755 C.E.,⁸² the Tang rulers took an approach to their empire's westernmost region that markedly differs from that of today's Party. At a time when Manichaeism surged in the frontier region as the dominant religion,⁸³ opposing the Buddhism practiced in hinterland China, the Tang administered the empire under the policies of *jimi* (羁糜, loose

78. See BODDE & MORRIS, *supra* note 9, at 29–43 (comparing the Legalist *fa* and the Confucian *li*).

79. See *id.* at 29, 40 (noting the “extreme provision” that “a son who brings an accusation of parental wrongdoing before the authorities is thereby unfilial and hence subject to heavy punishment.”).

80. See DE BARY & LUFRANO, *supra* note 75, at 233.

81. See *id.* at 228.

82. Pillalamarri, *supra* note 28.

83. This religion, founded by Manes (216–276 C.E.) in modern-day Iran, survived in the Roman Empire and central Asia, including Xinjiang and China proper, until around the fourteenth century C.E. It blended Christian, Gnostic, and pagan elements and was based on the eternal conflict between the forces of light and darkness. For more information on the religion, see JOHN KEVIN COYLE, *MANICHAISM AND ITS LEGACY* (2009).

rein) and *biantong* (变通, flexible arrangements).⁸⁴ During the nearly three centuries of Tang rule, the empire maintained a “professional polyglot . . . army” and scholars recorded that it was “fashionable” to speak and compose official documents in Turkish.⁸⁵ Even within the Chinese bureaucracy at the capital of Chang’an (西安, modern-day Xi’an), 17.4% of ministers and advisers were of non-Han Chinese ancestry, according to a study of surnames in imperial records.⁸⁶ Close political association with the independent Uighur Khanate in the mid-seventh century C.E. also proved essential for the Tang’s defeat of the An Lushan rebellion, and to cement the Tang-Uighur alliance, the Uighur Khagan Bayanchur instructed his daughter, Princess Pijia, to marry the Tang Prince Li Chengcai and took the Tang Princess Ninguo as his own wife.⁸⁷ James Millward goes as far as to write that, contrary to popular historical belief, it was not the northern steppe peoples who were “sinicized” during the Tang dynasty but rather the Han Chinese aristocracy that was “Turkicised.”⁸⁸ Today, the lesson of the Tang in Xinjiang is their strategy of indirect rule and multicultural tolerance which allowed them to maintain sovereignty over the region for more than a hundred years.

Initially, the Qing dynasty (1636-1912 C.E.) took a similarly flexible approach to the governance of Xinjiang. Labeling the region *shudi* (属地, outer dependency) rather than *sheng* (省, province),⁸⁹ the Qing rulers went further than perhaps any other Chinese dynasty, apart from the Yuan (C.E. 1271–1368),⁹⁰ in incorporating Turkic and nomadic culture into their style of governance. Although prominent PRC historians had previously dismissed the Manchus, the Turkic eth-

84. JUSTIN M. JACOBS, *XINJIANG AND THE MODERN CHINESE STATE* 4 (2016).

85. Ho, *supra* note 17, at 133–34.

86. *Id.* at 133.

87. See MILLWARD, *supra* note 15, at 32 (“The Tang skilfully [sic] employed the politics of recognition and marriage to keep the Western Türk kaghanate off-balance.”).

88. *Id.*

89. JACOBS, *supra* note 84, at 4.

90. Founded by the grandson of Genghis Khan, Kublai, the Yuan was the first non-Han dynasty to rule all of China. In order to bolster his legitimacy, Kublai claimed succession from the Tang and predecessor Han Chinese dynasties in his inheritance of the Mandate of Heaven. TIMOTHY BROOK, *THE TROUBLED EMPIRE: CHINA IN THE YUAN AND MING DYNASTIES* 27 (2010).

nic group originally from Manchuria that had founded the Qing, as “barbarians who became Chinese,”⁹¹ more recent scholarship posits that the Manchus deliberately retained many Turkic customs, including the practices of horsemanship and archery, the writing of official documents in various languages such as Manchu, Mongol, Tibetan, Uighur, and Arabic, and the remarrying of widows, all of which went against traditional Han Chinese custom.⁹² Emperor Qianlong (1711–1799), one of the Qing’s most revered, if cruel,⁹³ rulers, learned how to speak Mongolian, Tibetan, and Uighur as well as his native Manchu and Chinese, demonstrating the early Qing’s cosmopolitan, multi-ethnic approach to governance.⁹⁴

Although the Qing were attuned to the cultural and economic practices of Xinjiang, they also stressed the importance of the Confucian moral education of the local population. Regardless of their other identities—Muslim, Turkic, Buddhist, Uighur, Tibetan, Mongol—the Qing sought to inculcate the values of loyalty and filial piety in ethnic minorities, molding them into good Confucian subjects by providing them with economic and administrative opportunities. As one way to “bridge the . . . chasm between [the Manchu] state and [the outer, non-Manchu] society,” for instance, the Qing bureaucracy would often “delegate various quasi-governmental tasks to members of the non-official indigenous elite,” such as Uighurs, Mongols, and Tibetans.⁹⁵ The Qing also encouraged more nomadic ethnic groups such as the Uighurs and Turks to

91. JAMES A. MILLWARD ET AL., *NEW QING IMPERIAL HISTORY: THE MAKING OF INNER ASIAN EMPIRE AT QING CHENGDE* 3 (2004).

92. *See id.* (providing accounts challenging the concepts of Sinicization and sinocentrism); *see also* Joanna Waley-Cohen, *The New Qing History*, 88 *RADICAL HIST. REV.* 193 (2004) (discussing the distinctive treatment of widow chastity between the Han and Manchu ethnicities).

93. During the Literary Inquisition, Emperor Qianlong advised his officers to hunt down the owners of any anti-Manchu books or poetry and eventually had thousands executed by slow slicing, decapitation, or prolonged mutilation. *See* R. KENT GUY, *THE EMPEROR’S FOUR TREASURES: SCHOLARS AND THE STATE IN THE LATE CH’IEN-LUNG ERA* 32–33, 160 (2010) (discussing the emperor’s desire to destroy anti-Manchu literature and the slow slicing of one scholar for book suppression).

94. MILLWARD, *supra* note 91, at 19.

95. W. M. THEODORE DE BARY & RICHARD LUFRANO, *SOURCES OF CHINESE TRADITION, VOLUME II: FROM 1600 THROUGH THE TWENTIETH CENTURY* 167 (2d ed. 2000).

take advantage of economic subsidies offered by the capital in Beijing and adopt agrarian, sedentary lifestyles.⁹⁶ By non-forcibly urging the peoples of the frontier to adopt Han-like practices of crop cultivation, the Qing hoped to decrease the likelihood of rebellion: Farmers relying on state agricultural aid to feed their families were less inclined and less capable than horse-riding, bow-equipped nomadic herdsman to contest Han Chinese and Manchu rule. Directly contrasting with CCP attempts to eradicate the Muslim identity of the Uighur people in Xinjiang today, the Qing developed a mutually beneficial relationship with the *ulama* (the Islamic learned community), on whom the Qing relied for the sorting of judicial matters involving shariah law.⁹⁷ Indeed, scholars have determined that the “key to Qing achievement lay in [the dynasty’s] ability to implement flexible culturally specific policies aimed at the major non-Han peoples inhabiting the Inner Asian peripheries of the empire.”⁹⁸ During the eighteenth century, for example, Han Chinese military officials coordinated the creation of state farms run by Muslim East Turkestanis in cities as various as Kucha, Aksu, Ush, Kashgar, Yarkand and Khotan.⁹⁹ Beginning in around 1760, the Qing also offered various settlers—not merely Han Chinese but also Tungans, East Turkestanis and Uighurs—homestead grants worth 4.5 acres of land, tools, twelve packets of seed, a loan of two pieces of silver, and a horse to facilitate agrarian development.¹⁰⁰ Even the governor of Xinjiang, Yuan Dahua, recognized the value of this differentiated treatment, writing in a 1911 communiqué to the capital that the Qing must not apply the “same rubric of rule” to the region as it did to the interior provinces.¹⁰¹

Certainly, the Party today applies a different “rubric of rule” to Xinjiang than the rest of Mainland China, but the current crackdown could hardly contrast more with the tolerance

96. See JAMES A. MILLWARD, *BEYOND THE PASS: ECONOMY, ETHNICITY AND EMPIRE IN QING CENTRAL ASIA 1759-1864* 50 (1998) (noting the order from the Qianlong Emperor to assign the East Turkestanis to cultivate lands in the Yili region).

97. MILLWARD, *supra* note 15, at 101.

98. Waley-Cohen, *supra* note 92, at 198 (quoting EVELYN S. RAWSKI, *THE LAST EMPERORS: A SOCIAL HISTORY OF QING IMPERIAL INSTITUTIONS* 7 (1998)).

99. MILLWARD, *supra* note 96, at 50.

100. *Id.* at 51.

101. JACOBS, *supra* note 84, at 3.

and flexibility that undergirded Tang and early Qing policies. Although Xinjiang today is a Semi-Autonomous Region, since the Urumqi riots of 2009, the Party has moved to establish a pervasive surveillance state based on physical checkpoints, facial recognition technology,¹⁰² and the massive presence of the People's Armed Police (PAP) in the region.¹⁰³ Uighurs have also been forced to submit their fingerprints and DNA samples for the purposes of tracking.¹⁰⁴ Of the Uighurs who are not currently detained in the more than ninety Re-education facilities in Xinjiang, many testify that it is difficult to even do their grocery shopping due to the ubiquity of checkpoints between their homes and the markets.¹⁰⁵ As of December 2019, evidence indicates that the CCP has compelled many Uighurs and Kazakhs from the Re-education facilities to work in state-operated factories, producing low-cost cotton for multinational companies such as Muji and Uniqlo.¹⁰⁶ As a result, Xinjiang under today's CCP is more forcefully controlled than it was during earlier times in its incorporation into the Chinese empire, and ethnic minorities face infringement upon their human rights to movement, speech and association, choice of labor, and religion, among others. Instead of earnestly incorporating elements of ethnic minority culture into governing institutions, as the Tang did, or offering beneficial economic incentives intended to deradicalize the few Uighurs and other dissidents who would actually be tempted to engage in violent extremism, like the early Qing, the Party has deployed a Legalist playbook reminiscent of Qin shi huang and the worst authoritarian precepts of Confucianism. As IHRL advocates might subtly remind average Han Chinese and CCP officials in their public communications and other

102. Paul Mozur, *One Month, 500,000 Face Scans: How China is Using A.I. to Profile a Minority*, N.Y. TIMES (Apr. 14, 2019), <https://www.nytimes.com/2019//technology/china-surveillance-artificial-intelligence-racial-profiling.html> [https://perma.cc/YMF4-Y8YR].

103. Chris Buckley et al., *How China Turned a City into a Prison*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/interactive/2019/04/04/world/asia/xinjiang-china-surveillance-prison.html> [https://perma.cc/PL4K-MXDX].

104. *China Moves to Expand DNA Testing in Muslim Region*, VOICE OF AMERICA (May 16, 2017), <https://www.voanews.com/east-asia/china-moves-expand-dna-testing-muslim-region> [https://perma.cc/S357-SAUU].

105. Buckley et al., *supra* note 103.

106. Buckley & Ramzy, *supra* note 2.

private outreach, historians and civilians alike know how these tactics eventually backfired.

Thirdly, the most recent historical example of Chinese authoritarian overreach in an attempt to suppress allegedly threatening culture is Mao Zedong's Cultural Revolution, which killed up to 1.5 million Chinese between 1966 and 1976.¹⁰⁷ One of the core tenets of Mao's political philosophy during this period was the purging of anyone—including party cadres, intellectuals, journalists, and international businesspeople—who had been tainted by Western ideas of capitalism and liberal democracy.¹⁰⁸ As a result, up to twenty million suspected Chinese citizens saw their lives uprooted as they were forcibly sent to the countryside.¹⁰⁹ Current President Xi Jinping's own father, Xi Zhongxun, was dragged before a crowd and accused of disloyalty for having “gazed at West Berlin through binoculars during a visit to East Germany.”¹¹⁰ Following the Soviet doctrine of atheism, Mao also banned the practice of all religious philosophies, from Confucianism to Catholicism.¹¹¹ In 1973, the CCP launched its infamous “Criticize Lin (Biao), Criticize Confucius Campaign,” which applauded the Red Guards' prior sacking of the Temple of Confucius and the sage's place of burial at Qufu in 1966.¹¹² Confucianism was targeted as one of the principle “Four Olds:” old ideas, old customs, old habits and old culture that were holding China back from fully achieving the Marxist ideal of a fully equal and harmonious society.¹¹³ In order to realize its utmost potential, China needed to eradicate its own indigenous ancient culture and Western liberal influence, both toxins that poisoned society's ability to advance. Encouraged by Mao, Red Guards ransacked the Soviet, French, British, and Indonesian embassies,

107. Evan Osnos, *The Cost of the Cultural Revolution: Fifty Years Later*, NEW YORKER (May 6, 2016, 11:42 AM), <https://www.newyorker.com/news/daily-comment/the-cost-of-the-cultural-revolution-fifty-years-later> [https://perma.cc/QH8R-AF8C].

108. *Id.*

109. *Id.*

110. *Id.*

111. *13 Things to Know About Religious Persecution in China*, TRT WORLD (Mar. 2, 2017), <https://www.trtworld.com/asia/13-things-to-know-about-religions-persecution-in-china-308451> [https://perma.cc/Y898-2QQW].

112. *It Was the Worst of Times*, ECONOMIST (May 14, 2016), <https://www.economist.com/05/14/it-was-the-worst-of-times> [https://perma.cc/FW3K].

113. *Id.*

yelling “Kill! Kill!”¹¹⁴ Despite the threat of public shaming, torture, and death, thousands of citizens in many major Chinese cities and small villages alike rebelled against the policies of the Cultural Revolution within a few years of its launch in 1966.¹¹⁵ Small entrepreneurs and farmers refused economic collectivism by selling their wares and crops on the black market under the noses of CCP cadres; practitioners of Daoism, Buddhism, Christianity and other social organizations met in secret or developed secret written and visual codes to communicate; and others staunchly rejected the incentive to tattle-tell on close family members and friends for perceived thought crimes, choosing instead to face prosecution and punishment.¹¹⁶ Overall, the fanaticism and repression of the Cultural Revolution left a deep imprint on contemporary Chinese society, and the CCP still expends much effort dealing with the campaign’s negative effects today.

The brutality perpetrated by Mao’s revolutionaries against their cultural and spiritual opponents was of such a vast scale that some of China’s most eminent writers have warned that “[a]nother disaster like [the Cultural Revolution] would surely mean the destruction of [China].”¹¹⁷ Even in the eyes of the Party, there is no question that Mao’s attempted purge of traditional culture was harmful to social stability.¹¹⁸ In the

114. Tom Phillips, *The Cultural Revolution: All You Need to Know About China’s Political Convulsion*, GUARDIAN (May 10, 2016), <https://www.theguardian.com/2016/may/11/the-cultural-revolution-50-years-on-all-you-need-to-know-about-chinas-political-convulsion> [<https://perma.cc/TVL4Y8QN>].

115. See generally FRANK DIKÖTTER, *THE CULTURAL REVOLUTION: A PEOPLE’S HISTORY, 1962–76* (2016). It is difficult to gain any precise estimate of the number of Chinese who resisted the Cultural Revolution in these ways, as the Party never collected such statistics; however, Dikötter has researched individual accounts from newly publicized government records of the period to conclude that such acts of rebellion were widespread.

116. *Id.*

117. YICHING WU, *THE CULTURAL REVOLUTION AT THE MARGINS: CHINESE SOCIALISM IN CRISIS* 3 (2014).

118. See Nicholas D. Kristof, *Legacy of Mao Called ‘Great Disaster’*, N.Y. TIMES (Feb. 7, 1989), <https://www.nytimes.com/1989/02/07/world/legacy-of-mao-called-great-disaster.html> [<https://perma.cc/QT3X-P63L>] (noting that the CCP’s official position is that Mao was “70 percent correct and 30 percent wrong.” It also reports how an official paper of the party at the time, *Guangming Daily*, published an article by an influential member of the Central Advisory Commission to the Chinese Communist Party urging the Chi-

years following the Cultural Revolution, increasing numbers of Chinese citizens have turned to formerly banned religions, such as Christianity, Daoism, and Buddhism, to combat the country's spiritually unsatisfying consumerist tendencies.¹¹⁹ For instance, in a government survey conducted in 2006, 31% of about 4,500 individuals surveyed described themselves as religious, representing a three hundred percent increase from the previous official inquiry.¹²⁰ Intriguingly, most of Christianity's newest followers in Mainland China are affluent millennials who,¹²¹ especially as they have children of their own, may desire a more comforting and purposeful life ethos to pass down to the next generation. The CCP has countered this rise in popular interest in Christianity by financially supporting Buddhist and Confucian revival and censoring information about the Cultural Revolution.¹²² Now, the government has even moved to force the Catholic Church—one of the official religions registered with the Party and thus allowed to operate in the country—to rewrite certain passages of Mandarin-language Bibles to conform with the Party line.¹²³ This defensive

nese people to not refrain from subjecting Mao to legitimate critique. Mao, according to the CCP author, “made big mistakes over a long period, and the result was a . . . historical tragedy.”).

119. Louisa Lim, *Chinese Turn to Religion to Fill a Spiritual Vacuum*, NPR (July 18, 2010), <https://www.npr.org/templates/story/story.php?storyId=128544048> [<https://cc/-H8F3>]; Yang Siqi, *Life in Purgatory: Buddhism is Growing in China, But Remains in Legal Limbo*, TIME (Mar. 16, 2016), <https://time.com//china-buddhism-religion-religious-freedom/> [<https://perma.cc/5C7K-EYDG>] (calling Buddhism the “biggest beneficiary” of the failure of capitalism and communism to imbue Chinese people's lives with meaning and estimating that, according to data collected by Pew Research in 2012, approximately 40% of the PRC's population maintain Buddhist or Buddhist-influenced spiritual beliefs).

120. Lim, *supra* note 119.

121. *Id.*; see also Adrian Zenz, *You Can't Force People to Assimilate. So Why is China at It Again?*, Opinion, N.Y. TIMES (Jul. 16, 2019), <https://www.nytimes.com//07/16/opinion/china-xinjiang-repression-uighurs-minorities-backfire.html> [<https://perma.cc/YG63-D2MG>] (noting that “the number of Christians in China is thought to have increased from 3.4 million in 1950 to about 100 million today”).

122. *The Battle for China's Spirit*, FREEDOM HOUSE 29 (Feb. 2017), https://freedomhouse.org/sites/default/files/FH_ChinasSprit2016_FULL_FINAL_140pages_compressed.pdf [<https://perma.cc/UG2J-G85L>].

123. Sébastien Falletti, *Xi Jinping veut réécrire la Bible pour l'adapter à la ligne du Parti communiste* [*Xi Jinping Wants to Rewrite the Bible to Adapt It to the Com-*

response to the surge in religion's popularity can be explained by spiritual sects' role as places of incubation for political opposition in China's past.¹²⁴ Beginning with the Taoist-inspired Yellow Turban Rebellion that brought the Han dynasty to its knees in the second century C.E.,¹²⁵ religion has provided the ideological spark for many threats against Chinese central governments: future Ming dynasty founder Zhu Yuanzhang's co-optation of Manichaeism against the ethnic Mongolian Yuan dynasty during the fourteenth century,¹²⁶ the White Lotus Rebellion in the late eighteenth and early nineteenth centuries,¹²⁷ the Taiping Rebellion of the 1850s and 1860s,¹²⁸ and the Buddhist and Taoist-influenced Falun Gong mass demonstrations of the 1990s and early 2000s¹²⁹ are all relevant examples. Today, the CCP likely is attempting to clamp down on the Catholic church and other hidden religious sects within the Mainland because of the importance of religion—Christian churches in particular—in helping to organize the 2019–2020 Hong Kong protests against Beijing.¹³⁰

minist Party Line], LE FIGARO (Dec. 22, 2019), <https://www.lefigaro.fr/international/xi-jinping-veut-reecrire-la-bible-pour-l-adapter-a-la-ligne-du-parti-communiste-20191222> [<https://perma.cc/Y32M-CC5A>].

124. JAMES R. LEWIS, *FALUN GONG: SPIRITUAL WARFARE AND MARTYRDOM* 7 (2018).

125. RAFE DE CRESPIGNY, *FIRE OVER LUOYANG: A HISTORY OF THE LATER HAN DYNASTY, 23-220 A.D.* 421 (2017).

126. See SHIH-SHAN HENRY TSAI, *PERPETUAL HAPPINESS: THE MING EMPEROR YONGLE* 20 (2001) (noting that Zhu Yuanzhang's alliance with the religious Red Turbans led him to "victory after victory until he occupied Nanjing and the surrounding region in the spring of 1356.").

127. WENSHENG WANG, *WHITE LOTUS REBELS AND SOUTH CHINA PIRATES: CRISIS AND REFORM IN THE QING EMPIRE* 42 (2014).

128. See Carl S. Kilcourse, *TAIPING THEOLOGY: THE LOCALIZATION OF CHRISTIANITY IN CHINA, 1843–64* (2016) (discussing the role of Christianity in the Taiping Rebellion, such as in forming the proclamation of the rebels).

129. See LEWIS, *supra* note 124, at 23 (noting that Hongzhi Li, who established Falun Gong, has claimed to have studied under Buddhist and Daoist spiritual masters).

130. Javier C. Hernández, *With Hymns and Prayers, Christians Help Drive Hong Kong Protests*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19//hong-kong-extradition-protests-christians.html> [<https://perma.cc/YQ5J>].

V. OPPOSING RE-EDUCATION WITH CONFUCIANISM

Besides leveraging these examples from Chinese history, Western leaders and IHRL advocates who wish to aid Uighurs and other ethnic minorities incarcerated in Xinjiang may also draw from a deep reservoir of helpful material from Confucian writings themselves. In conversations with Chinese officials and citizens and in other forms of advocacy, Westerners should attempt to demonstrate how the Re-education program is based upon a misleading and warped interpretation of basic Confucian instruction.

First, although Confucius and his disciples did stress self-cultivation, the Great Sage himself vehemently warned against the potential backlash that forced education programs might cause. Imposing instruction through violence, he said, would encourage the masses to attempt “deception and ostentatious compliance,” or, worse, outright “defiance and rebellion.”¹³¹ Confucius’ caution against these oppressive tactics in the sixth century B.C.E. is particularly prescient in light of the tragic rise and rapid fall of the first emperor Qin 400 years later.¹³² Draconian punishments for petty crimes, collective punishments imposed upon families, and attempted eradication of competing philosophies all within a twenty-year period left peasants feeling as if they had no logical choice but rebellion. Therefore, for any student of basic Chinese history, this parable, illustrated by the Qin Dynasty as well by the Cultural Revolution,¹³³ is likely to resonate.

Second, one of Confucius’ most renowned students, Mencius, also stressed the importance of individual choice in the pursuit of lifelong education and virtue. Although he hoped that individuals would spend their lives learning to be benevolent human beings who centered their perspectives around others, Mencius did not sanction state-sponsored violence to achieve this transformation.¹³⁴ Rather, he thought that the state should “reveal the innate deficiencies” of the masses

131. See LIN, *supra* note 12, at 20.

132. See *infra* notes 89–96 and accompanying text.

133. However, since this episode of history is heavily censored by the CCP, the invocation of this example should be used only with extreme delicacy and perhaps avoided altogether.

134. Leibold, *supra* note 6. (“Mencius . . . stressed the importance of self-improvement.”).

through the exemplary, saintly guidance of the Emperor and the ruling bureaucrats.¹³⁵ Regular people's observation of the sagely conduct of the elites would encourage them to regard their own depravity with *chigan* (shame or 耻感) and to seek to develop their own *ren*.¹³⁶ Notably, Mencius even intimated that if the emperor neglected to practice benevolence towards his subjects, the people might rightfully rebel against the dynasty.¹³⁷ This concept illustrates that the leader's duty under Confucianism was to rule through benevolence, not through brute force. If an emperor could not persuade his subjects to cultivate *ren* and abide by the rituals of *li* through his saintly example, then he did not deserve to remain in power.

Lastly, IHRL advocates should adopt communication strategies that highlight the fundamental importance of empathy in Confucian teachings. The basic theory of peace—the achievement of the *Da Tong*—in Confucianism is that the spreading of benevolence (i.e. empathy) through the guidance of a saintly leader will bring about social harmony. Even one of the most conservative and perhaps harshly-minded Confucian scholars, Xunzi, emphasized the vital importance of respecting *qing* (human feelings or 情) in guiding the masses towards an orientation of goodness.¹³⁸ Can it truly be said that the CCP is taking a benevolent, others-centered approach towards the ethnic minorities of Xinjiang in its Re-education program? Rights advocates, in their communications materials and in direct encounters with Chinese leaders, should allude to these troubling contradictions. They should highlight the disdain with which Confucius, Mencius, and other scholars would look upon harshly forcing subjects to undergo mandatory instruction and forced labor. As was seen during the Qin Dynasty and the Cultural Revolution, overbearing, vio-

135. LIN, *supra* note 12, at 11.

136. *See Id.* (“Shame becomes an agent of enlightenment.”).

137. *See* John D. Langlois, *The Hung-wu Reign, 1368-1398*, in 7 THE CAMBRIDGE HISTORY OF CHINA: THE MING DYNASTY, 1368–1644, PART I 107, 173 (Denis Twitchett & John K. Fairbank eds., 1988) (noting passages conveying the “right of rebellion” in Mencius’s work).

138. Unlike Mencius, Xunzi believed that human nature (*xing* or 性) was inherently evil and it was only through social interaction and the development of feelings, *qing*, that men could be made good. *See* CHANG, *supra* note 51, at 301–23 (“By learning and practice, human nature can be transformed.”).

lent approaches to achieving stability have often backfired with cataclysmic results for the ruling regime. Rather than try to coerce Uighurs, Kazakhs, and other Muslim minorities in Western China to adopt the cultural practices of the Han majority, advocates could suggest that the Party look to the Tang and Qing examples of flexible and tolerant administration.

VI. THE PRC'S VIEW OF IHRL AND WESTERN BIASES

Leveraging the philosophical and historical hypocrisies of the CCP's treatment of minorities in Xinjiang could lead to better advocacy outcomes for Western political leaders and human rights activists, but their strategy reevaluation should not cease there. First, Westerners seeking to condemn Re-education should understand some of the legitimate grievances that the PRC (and indeed, much of the Global South) has with IHRL. Second, critical self-reflection and honesty about Western countries' own relationship with past and current assimilation policies may also be helpful in convincing the Chinese public and Party officials that Re-education is wrong.

As China formerly viewed the international legal system as a product of bourgeois capitalism intended to impose the values of liberal democracy and free markets on the developing world,¹³⁹ many in the PRC still see Western human rights as a form of cultural imperialism. Human rights advocates are branded as agents of social discord. Since the 709 crackdown of July 2015—an event which saw the imprisonment of approximately 300 Chinese lawyers—the CCP has embraced an aggressive approach to countering Western human rights discourse, both domestically and abroad.¹⁴⁰ Within its own borders, the government has detained and tortured hundreds of human rights lawyers, subjecting them to electric shocks and beatings and forcing them to consume semi-poisonous substances.¹⁴¹ The CCP has even gone as far as to harass and threaten lawyers' families, strip them of their legal licenses,

139. See Chen, *supra* note 7, at 1184 (“According to the popular view among Chinese officials and scholars in the 1950s–1960s, the ruling class of capitalist countries used that system to exploit and oppress other nations.”).

140. *China: On ‘709’ Anniversary, Legal Crackdown Continues*, HUM. RTS. WATCH, (July 7, 2017), <https://www.hrw.org/news/2017/07/07/china-709-anniversary-legal-crackdown-continues> [<https://perma.cc/MR37-LLX4>].

141. *Id.*

and force them to renounce their previous behavior and apologize to the Party on public television.¹⁴² It appears that Beijing has continued these tactics as late as August 2019, as evidenced by the disappearance of Mainland human rights advocate Chen Qiushi after he attended pro-democracy protests in Hong Kong.¹⁴³

Globally, China has sought to promote its own interpretation of IHRL to counter the West, proclaiming that “human rights development with Chinese characteristics” also accord with international standards.¹⁴⁴ Although many American and European scholars see this effort as propaganda designed to legitimize the country’s domestic human rights abuses,¹⁴⁵ the history and philosophy underlining the PRC’s strategy should not be overlooked. From the Chinese perspective, the country only fully entered the Westphalian system of nation-states in 1971, when the PRC was admitted into the United Nations.¹⁴⁶

142. *Id.*

143. Laurie Chen, *Chinese Human Rights Lawyer Safe After Return from Hong Kong Protests Trip*, S. CHINA MORNING POST (Aug. 21, 2019), <https://www.scmp.com/china/society/article/3023796/chinese-human-rights-lawyer-chen-qiushi-missing-after-return> [<https://perma.cc/Y63U-XFV6>].

144. Xu Xin, *Human Rights Development Path with Chinese Characteristics Completely Correct: Chinese Official*, XINHUA, (Nov. 10, 2018), http://www.xinhuanet.com/-11/10/c_137597213.htm [<https://perma.cc/E2V7-FM5G>] (quoting Zhang Jun, the PRC’s assistant foreign minister, who gave comments before the U.N. Human Rights Council before it examined China during Universal Periodic Review in Geneva in 2018). See also MARIA ADELE CARRAI, SOVEREIGNTY IN CHINA 213 (2019) (“If many of the norms and institutions [of IHRL] reflect a very strong Western imprint, China has become more adept at reshaping norms to fit its preferences. . . . Sometimes Chinese interpretation of norms contributes to eroding the meaning attached to them, as in the case of human rights, which are deliberately “conceptually diluted” through a process of accepting general norms then challenging them through different interpretations and implementation.”).

145. See, e.g., Chen, *supra* note 7, at 1179 (criticizing the concept “Human Rights with Chinese Characteristics” as “legitimize China’s domestic human rights abuses”); Fergus Ryan, *‘Human Rights with Chinese Characteristics’ Aren’t Human Rights at All*, AUSTRALIAN STRATEGIC POL’Y INST. (Nov. 8, 2018), <https://aspistrategist.org.au/-with-chinese-characteristics-arent-human-rights-at-all/> [<https://perma.cc/W4ZL-Q7WN>] (stating that the formulation of “Human Rights with Chinese Characteristics” “is reminiscent of how Beijing describes its own system of government: ‘socialism with Chinese characteristics’—which means it’s not socialism at all.”).

146. *Struggle to Restore China’s Lawful Seat in the United Nations*, MINISTRY FOREIGN AFF. OF CHINA, https://www.fmprc.gov.cn/mfa_eng/_665539/

As such, the PRC maintains that it lacked the initial opportunity to shape IHRL.¹⁴⁷ China further asserts that it was denied the opportunity to influence the rules of international law because the United States did not want another communist country joining the Soviet Union as a permanent member of the Security Council.¹⁴⁸ In the CCP's perspective—and perhaps in the view of many Mainland Chinese citizens—international law, and especially IHRL, has been dominated for decades by the Western countries and has ignored the cultural and legal traditions of the world's most long-lasting, populous, and powerful polity. Should the Chinese voice be discarded as illegitimate and barbaric merely because the country could not participate in the initial conversation about the appropriate balance between state-based and individual rights? Though many Western political leaders and human rights lawyers remain dismissive of the contemporary importance of these facts and protest the idea that international law is a form of cultural imperialism,¹⁴⁹ these arguments are not without basis. In July of 2019, a group of thirty-seven countries submitted a letter to the U.N. Human Rights Council and the U.N. High Commissioner for Human Rights in Geneva to defend the CCP's actions in Xinjiang.¹⁵⁰ These countries supporting Beijing's posi-

_665543/_665547/t18013.shtml [https://perma.cc/LBD2-LMJZ] (last visited Nov. 16, 2020).

147. *See id.* (“After the founding of New China, however, owing to the pursuit of a policy of hostility towards New China by the United States, China’s seat in the United Nations was still occupied by the Chiang Kai-shek clique overthrown by the Chinese people.”).

148. *Oct. 25, 1971: People’s Republic of China In, Taiwan Out, at U.N.*, N.Y. TIMES: THE LEARNING NETWORK (Oct. 25, 2011), <https://learning.blogs.nytimes.com/2011/10/25/oct-25-1971-peoples-republic-of-china-in-taiwan-out-at-un/> [https://perma.cc/N7KY-P78H].

149. Of course, not all scholars agree on this. *Compare, e.g.*, Philip J. Alston, *Does the Past Matter? On the Origins of Human Rights*, 126 HARV. L. REV. 2043 (2013) (reviewing JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2012)) (pointing out the “polycentric nature of the human rights enterprise”), *with* TONY ANGHIE, *IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW* (2005) (arguing that international law as a discipline has an imperial nature), *and* SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010) (contending that “human rights are best understood as survivors: the god that did not fail while other political ideologies did”).

150. Catherine Putz, *Which Countries Are for or Against China’s Xinjiang Policies?*, DIPLOMAT (July 15, 2019), <https://thediplomat.com/2019/07/which->

tion on human rights far outnumbered the twenty-two nations—led by Australia, the United Kingdom, France, Germany and other E.U. member states—that signed an initial letter to the Council condemning the Re-education program as a violation of several treaties under international law.¹⁵¹ Although the signatures collected by the PRC were perhaps prompted by promises of financial aid or made as a precaution against incurring the wrath of one of the world’s most powerful economies, there is no doubt that many developing countries prefer Beijing’s culturally relativist conception of human rights.¹⁵²

Besides highlighting the various ways in which Confucian teachings and Chinese history cast doubt upon the wisdom of Beijing’s strategy in Xinjiang, Western leaders and human rights advocates should also acknowledge that their countries have, in recent memory, taken aggressive action against terrorism¹⁵³ and deployed forced assimilation tactics to integrate minority groups. For instance, in the nineteenth and early twentieth centuries, the United States perpetuated mass slaughter against Native Americans in order to further the goal of Western territorial expansion.¹⁵⁴ In 1848, after decades of sporadic

countries-are-for-or-against-chinas-xinjiang-policies [https://perma.cc/CE2Q-WUV3].

151. *Id.*

152. Eric Posner, *The Case Against Human Rights*, *GUARDIAN* (Dec. 4, 2014), <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights> [https://perma.cc/NPZ3-JF4D].

153. Various Chinese officials have cited the U.S. “War on Terror” as precedent and inspiration for the Re-Education and Anti-Terror campaign in Xinjiang. In November 2018, Chinese Foreign Secretary Wang Yi stated: “The efforts [in Xinjiang] are completely in line with the direction the international community has taken to combat terrorism and are an important part of the global fight against terrorism.” Admittedly, Uighurs have perpetrated some terrorist attacks in China that have claimed hundreds of Han lives, most notably the Urumqi riots of 2009 and the stabbing attack of 2014 in Yunnan province. Akbar Shahid Ahmed, *China Is Using U.S. ‘War on Terror’ Rhetoric to Justify Detaining 1 Million People*, *HUFFINGTON POST* (Dec. 12, 2018), https://www.huffpost.com/entry/china-is-justifying-its-biggest-human-rights-crisis-in-decades-with-made-in-the-usa-war-on-terror-rhetoric__39c [https://perma.cc/U5MV-7KX7]. See also Chi Zhang, *supra* note 51 (reporting the deteriorating relationship between the Han people and Uighurs after “violent incidents allegedly involving knife-wielding Uighurs in inland China”).

154. Some scholars have even deemed these acts to constitute ethnic cleansing and genocide. Gary Clayton Anderson, *The Native Peoples of the American West: Genocide or Ethnic Cleansing?*, 4 *W. HIST. Q.* 407, 407–08.

wars and raids against tribes as the Americans pushed towards the Pacific, Commissioner for Indian Affairs William Medill first advanced the idea that Native Americans should be “colonized” on reservations.¹⁵⁵ Under this policy, Native Americans would be forced to give up much of their land and move onto federally controlled territory, where they would be schooled in Christianity, the English language, and methods of agriculture. In fact, until the beginning of the twentieth century, the American government established Indian “boarding schools,” where children were separated from their families and forbidden from speaking indigenous languages and wearing traditional clothing,¹⁵⁶ eerily similar to current events in Xinjiang. Given that the PRC has used similar rhetorical strategies in characterizing the Re-education program’s centers as boarding schools and training centers, it is likely that at least some Party officials are familiar with these earlier episodes of American history.¹⁵⁷

Likewise, in Canada and Australia, governments in the nineteenth and twentieth centuries adopted policies of violent “dispersal,” summary punishment, and child removal, as well as non-violent rights-limiting policies, to prevent indigenous populations from rebelling against European settlers and encourage assimilation.¹⁵⁸ Forced labor for Aboriginal peoples formed part of British colonial policy in Australia, where unpaid native workers were particularly important to the pearling and agricultural industries.¹⁵⁹ Punishment for contesting this

155. *Id.* at 417.

156. Sarah K. Elliot, *How American Indian Reservations Came to Be*, PBS (Oct. 18, 2016), <http://www.pbs.org/wgbh/roadshow/stories/articles/2015/5/25/how-american-indian-reservations-came-be> [<https://perma.cc/2SHK-MQ83>].

157. Chris Buckley & Amy Qin, *Muslim Detention Camps Are Like ‘Boarding Schools,’ Chinese Official Says*, N.Y. TIMES (Mar. 12, 2019), <https://www.nytimes.com/2019/03/12/world/asia/china-xinjiang.html> [<https://perma.cc/6TZU-6VKC>]; see also SHIYUAN HAO, HOW THE COMMUNIST PARTY OF CHINA MANAGES THE ISSUE OF NATIONALITY: AN EVOLVING TOPIC 21 (2016) (noting how after the 2009 Urumqi riots, some domestic commentators urged the Party to “abolish nationalities” and “learn from the United States.”).

158. ANN CURTHOYS & JESSIE MITCHELL, TAKING LIBERTY: INDIGENOUS RIGHTS AND SETTLER SELF-GOVERNMENT IN COLONIAL AUSTRALIA, 1830-1890 22 (2018); ANDREW ARMITAGE, COMPARING THE POLICY OF ASSIMILATION: AUSTRALIA, CANADA, AND NEW ZEALAND 78–79 (1995).

159. CURTHOYS & MITCHELL, *supra* note 158, at 24.

brutal system, most notorious in the Western part of the country, often included imprisonment and government-sanctioned settler violence.¹⁶⁰

Additionally, in France, policies to homogenize regional differences and cement national unity less than 150 years ago were similar to those being deployed today in Western China. For instance, under the 1882 *loi Jules Ferry*, the government mandated instruction at state secular schools for children ages six through thirteen.¹⁶¹ Two of the primary purposes of this law were to counter the influence of the Catholic church and its schools and to standardize Parisian French as the common language of the country's disparate regions.¹⁶² Furthermore, under a policy that would certainly be denounced as a human rights violation today, the French government banned the use of Breton, Lyonnais, Savoyard, and other provincial languages in schools from the late nineteenth to the mid-twentieth century.¹⁶³ Although IHRL principles such as self-determination, anti-discrimination, and the right to education¹⁶⁴ did not exist in the nineteenth century, awareness of this recent history can help European and American rights advocates anticipate CCP attempts to paint Western advocacy as hypocritical and politically motivated.

Even in contemporary Europe, despite the impressive legal protections for human rights enshrined in E.U. law and the European Convention on Human Rights, certain governments have deployed what human rights advocates have deemed missionary-like assimilative policies towards ethnic mi-

160. *Id.* at 364.

161. *Dossier d'histoire: Les Lois scolaires de Jules Ferry*, [History File: The Education Laws of Jules Ferry], SÉNAT DE FRANCE, <http://www.senat.fr/evenement/archives/D42/> [https://perma.cc/SHY2-WUG5] (last visited Nov. 16, 2020).

162. See *Public Schools: Where New Citizens Are Made*, FACING HIST. & OURSELVES, <https://www.facinghistory.org/civic-dilemmas/public-schools-where-new-citizens-are-made> [https://perma.cc/HJ3V-4REH] (last visited Nov. 16, 2020) (noting that schools were to function as “the agent of assimilation.”)

163. Blandine Le Page, *Quand le Breton était interdit à l'école* [When the Breton Language Was Forbidden at School], OUEST-FRANCE (Feb. 25, 2016), <https://www.ouest-france.fr/bretagne/quand-le-breton-etait-interdit-lecole-4055779> [https://perma.cc/734W-KTPW].

164. International Covenant on Economic, Social, and Cultural Rights arts. 1, 2(2), 13, Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights arts. 1(1), 2(1), 18(4), Dec. 16, 1966, 999 U.N.T.S. 171.

norities.¹⁶⁵ For example, in 2018 Denmark introduced an obligatory thirty hour per week day care program for children under six living in predominantly Muslim areas, and the government has even threatened a four-year prison sentence for immigrant parents who imperil their children's education by taking them out of school for extended visits to other countries.¹⁶⁶ With unrest leftover from the 2011 Arab Spring still pushing tens of thousands of migrants into E.U. member states each year,¹⁶⁷ Denmark is not the only country to have established a strict social integration policy. Mandatory civics and culture courses and tests are required for immigrants to gain lawful residency in France, Germany, the United Kingdom, the Netherlands, Denmark and Austria.¹⁶⁸ As CCP-affiliated media has been quick to point out,¹⁶⁹ these policies expose a potential weakness in Western calls for stronger IHRL in China. Even though mandatory civics classes and preferential treatment for Christian refugees¹⁷⁰ do not rise to the level of

165. Annabelle Timsit, *In Denmark and Throughout Europe, Assimilation is Becoming Mandatory*, QUARTZ (July 3, 2018), <https://qz.com/1320234/denmarks-new-laws-targeting-ghetto-children-show-how-assimilation-is-becoming-mandatory/> [<https://perma.cc/K58G-ZJLJ>].

166. *Id.*

167. See Demetrios G. Papademetriou, *The Migration Crisis is Over: Long Live the Migration Crisis*, MIGRATION POL'Y INST. (Mar. 2017), <https://migrationpolicy.org//migration-crisis-over-long-live-migration-crisis> [<https://perma.cc/83BE-JGN6>] (“Since the early spring of 2016, the number of people migrating across the Mediterranean has stabilized, to about 200,000 people.”); Megan Specia, *Hundreds of Migrants Stranded in Mediterranean in Stand-off over Aid Ships*, N.Y. TIMES (Aug. 12, 2019), <https://www.nytimes.com/2019/08/12/europe/mediterranean-migrant-ships-italy.html> [<https://perma.cc/6SYL-UZ2T>] (noting that thousands of migrants have died attempting to cross the Mediterranean since 2015).

168. See Timsit, *supra* note 165.

169. See *US Human Right Defects a Systematic Problem Rooted in the US Society: Observers*, GLOBAL TIMES (July 8, 2020), <https://www.globaltimes.cn/content/1193836.shtml> [<https://perma.cc/34C7-UGAM>] (pointing out racism and embedded xenophobia in the U.S. as demonstrated by historic bars to Asian immigration and voting and continued police violence against African-Americans); Mu Lu, *Virus Unleashes Racism in Western Societies*, GLOBAL TIMES (Feb. 2, 2020), <https://globaltimes.cn/content/1178267.shtml> [<https://perma.cc/2YME-7Y9B>] (criticizing “racist” and anti-Chinese headlines by German and Danish papers covering the Covid-19 outbreak).

170. Daniel Burke, *Trump Says US Will Prioritize Christian Refugees*, CNN (Jan. 30, 2017), <https://www.cnn.com/2017/01/27/politics/trump-christian-refugees/>.html [<https://perma.cc/N9JF-N9RR>].

the peremptory IHRL violations the PRC is accused of in Xinjiang, the CCP will continue to highlight Western democracies' struggles with integration and social stability to discredit IHRL. Western governments and advocates should therefore be ready to acknowledge these continuing challenges in their home countries and leverage as counterweight the aforementioned historical and philosophical arguments that may be more persuasive to Chinese leaders and citizens.

VII. CONCLUSION

In conclusion, understanding the Confucian justifications for the Re-education policy and engaging in honest self-critique about the hypocrisies and weaknesses of IHRL would aid Western leaders and human rights advocates in convincing the Chinese public, and even China's leaders, of the danger of their current tactics. The CCP's policy towards Xinjiang did not originate in a moral vacuum. Rather, the Party's propaganda was developed to convince the Chinese public of Re-education's philosophical legitimacy. But by highlighting the irony of what Confucius, Mencius and other ancient philosophers might say about forced education and examples from China's own history of when such policies backfired, IHRL advocates will have stronger, more culturally attuned and convincing arguments for the Chinese public about why Re-education is wrong. If advocates can show more citizens and Party leaders that China's treatment of Uighurs and other minorities is not only dangerous but also abhorrent to the basic Confucian principles of benevolence and autonomous cultivation, they might actually be able to achieve positive political change and prevent rights violations. As Confucius would agree, benevolence and empathy—from Western human rights proponents towards China and from Han Chinese to the Uighurs and other ethnic minorities—can yield myriad benefits.

