



XI JINPING, MICHEL FOUCAULT, AND SPY BALLOONS? COMMUNIST CHINA'S THEORY OF CONTROL AND VISIONS OF A POST-WESTPHALIAN WORLD ORDER

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INTRODUCTION

The Trump Administration’s 2017 National Security Strategy formally reoriented United States (“U.S.”) national security planning toward the challenges of great power competition, particularly with “the revisionist powers of China and Russia.”¹ In the 2018 Strategy, U.S. officials emphasized that “[i]nter-state strategic competition, not terrorism, is now the primary concern in U.S. national security.”² The equivalent guidance documents from the Biden Administration reiterate that point, and make it a bipartisan one, by warning that “the post-Cold War era is definitively over, and a competition is underway between the major powers to shape what comes next.”³ Of those two revisionist powers, it is the People’s Republic of China (“PRC”) that is described as the most worrisome in the long term. “The PRC,” the Biden Administration declares, “is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective.”⁴ In fact, President Biden describes this competition in almost apocalyptic terms: as a “contest for the future of our world.”⁵

¹ EXEC. OFFC. OF THE PRESIDENT, *National Security Strategy of the United States of America* (Dec. 2017), at 25, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

² U.S. DEP’T OF DEFENSE, *Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military’s Competitive Edge* (2018), at 1, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>

³ EXEC. OFFC. OF THE PRESIDENT, *National Security Strategy* (Oct. 2022), at 6, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.

⁴ *Id.* at 8.

⁵ *Id.* at 3.

American leaders have drawn attention to various ways in which PRC behavior threatens U.S. interests, as well as the rules-based international order and the superstructure of international law that grew out of it. The threats that these leaders have identified include the prospect of a Taiwanese invasion,⁶ overflights by spy balloons,⁷ the militarization of the South China Sea,⁸ and possible “kinetic attacks and non-kinetic attacks ... on the [U.S.] power grid or on pipelines” in the event of conflict over Taiwan.⁹

And yet, American officials have been less clear about what sort of world China wishes to create, and how such threats fit into PRC strategy. To be sure, some scholars and academics have offered assessments of PRC conceptions of the world and described the strategic end-state desired by its ruling Chinese Communist Party (“CCP”).¹⁰ Among such genuinely strategic

⁶ Lara Seligman, *U.S. Warns of China’s Growing Threat to Taiwan*, POLITICO (Mar. 16, 2021), <https://www.politico.com/news/2021/03/15/china-growing-threat-taiwan-476170>.

⁷ Remarks by President Biden on the United States’ Response to Recent Aerial Objects at South Court Auditorium, Eisenhower Executive Office Building (Feb. 16, 2023).

⁸ Edward Wong & Michael Crowley, *U.S. Says Most of China’s Claims in South China Sea are Illegal*, N.Y. TIMES (July 13, 2020), <https://www.nytimes.com/2020/07/13/world/asia/south-china-sea-pompeo.html>.

⁹ Newsweek, *China Will Attack U.S. Soil If Tensions Boil Over: Army Secretary*, MICROSOFT START (Mar. 2, 2023), <https://www.msn.com/en-us/news/world/china-will-attack-u-s-soil-if-tensions-boil-over-army-secretary/vi-AA189yoQ?ocid=mailsignout&pc=U591&cvid=ee28f690a80a4dfabae587844908ec41&ei=11>.

¹⁰ See Timothy R. Heath, Derek Grossman, & Asha Clark, *China’s Quest for Primacy: An Analysis of Chinese International and Defense Strategies to Outcompete the United States*, RAND CORPORATION (2021), at 71, https://www.rand.org/pubs/research_reports/RRA447-1.html; see also The Hon. Christopher Ford, *China’s Strategic Vision – Part Three: Envisioning a Sinocentric World*, MITRE CENTER FOR STRATEGIC COMPETITION *Occasional Papers*, vol. 1, no. 3 (June 27, 2022), <https://irp.cdn-website.com/ce29b4c3/files/uploaded/China%27s%20Strategic%20Vision%20>

assessments is a paper published by the U.S. State Department in late 2020, which included both a high-level analysis of PRC strategic objectives and a granular description of some of the means the CCP employs to those ends.¹¹ Nevertheless, there remains surprisingly little work that clearly ties concrete PRC threat behaviors into broader understandings of the grand strategy pursued by the PRC and the CCP.

This article seeks, at least in part, to start filling that analytical gap. Over the following pages, it will briefly summarize conclusions offered elsewhere about the future world the CCP seeks to create, pointing out the ways in which this vision aims to create what might be described as a *post-Westphalian* international order: one in which international law and the formal coequality of sovereign states are relegated to qualified and secondary importance within a new (or arguably very old) schema of order conceived in fundamentally monist terms of Sinicized civilizational hierarchy.

Thereafter, this paper will outline at least some of the ways in which China achieving those objectives would necessarily present direct challenges to U.S. interests and even threaten the

0%28MITRE%29%20Part%20III.pdf; Christopher A. Ford, *China's Strategic Vision: A Short Primer*, MITRE CENTER FOR STRATEGIC COMPETITION *Occasional Papers*, vol. 1, no. 9 (Dec. 28, 2022), <https://irp.cdn-website.com/ce29b4c3/files/uploaded/China%20Vision%20Primer%20FINAL.pdf>.

¹¹ U.S. DEP'T OF STATE, POL'Y PLAN. STAFF, OFF. OF THE SEC'Y OF STATE, *THE ELEMENTS OF THE CHINA CHALLENGE* (Nov. 2020) (revised Dec. 2020), <https://www.state.gov/wp-content/uploads/2020/11/20-02832-Elements-of-China-Challenge-508.pdf>. The author of this paper has also tried to provide a cross-cutting approach to such ends and means. *See, e.g.*, The Hon. Christopher Ford, *China's Strategic Vision – Part One: The Communist Party's Strategic Framing*, MITRE CENTER FOR STRATEGIC COMPETITION *Occasional Papers*, vol. 1, no. 1 (June 27, 2022), <https://irp.cdn-website.com/ce29b4c3/files/uploaded/China%27s%20Strategic%20Vision%200%28MITRE%29%20Part%20I.pdf>; Christopher Ford, *China's Strategic Vision – Part Two: Tools and Axes of Competition*, MITRE CENTER FOR STRATEGIC COMPETITION *Occasional Papers*, vol. 1, no. 2 (June 27, 2022), <https://irp.cdn-website.com/ce29b4c3/files/uploaded/China%27s%20Strategic%20Vision%200%28MITRE%29%20Part%20II.pdf>; *See also* Ford, *supra* note 10.

American homeland. Finally, it will offer a description of how Beijing’s strategic vision—and any chances for success in implementing this vision—relies upon a theory of authoritarian societal control grounded in a “leverage web”¹² of potential coercive power and a pervasive apparatus of systemic surveillance. This paper will outline not merely how the CCP tries to implement this theory of control in China itself, but also how it aspires—increasingly, and by degrees—to implement this theory in the *rest* of the world, and how the Party’s campaign relies structurally, in both cases, upon the collection and analysis of data on a massive scale. All in all, therefore, this paper offers a framework through which specific PRC threat behaviors can be tied back to the CCP’s grand strategy and its efforts to replace today’s “rules-based international order” with something rather different.

I. THE CCP’S STRATEGIC OBJECTIVE

A. *Monist Hegemony*

Characterizing the threats that the PRC presents to the U.S. and to other countries in the international system requires a degree of care and nuance, because, in this author’s view, it is *not* the CCP’s strategic objective to directly subjugate or impose proxy rule upon the U.S. It differs in this way from Soviet Communism, for which this was—in theory at least—the ultimate objective, and which always remained formally dedicated to the eventual goal of global revolution. One should not misunderstand this comment, however, for the CCP-ruled Party-State in China is in many respects quite geopolitically predatory; it simply is not so in the same way, nor as directly, as the Soviets were.

¹² See Christopher A. Ford, *Systems and Strategy: Causal Maps, Complexity, and Strategic Competition*, MITRE CENTER FOR STRATEGIC COMPETITION *Occasional Papers*, vol. 1, no. 7 (Nov. 14, 2022), at 3, <https://irp.cdn-website.com/ce29b4c3/files/uploaded/Systems%20and%20Strategy%20Paper%20FINAL2.pdf>.

Rather, PRC threats to other countries arrive in two ways. First, consistent with ancient conceits of virtue and monist political authority described in Part II, the CCP's strategic endgame is the creation of a new global order centered around China,¹³ in which all other players show China the respect and status-deference it feels it deserves as the self-imagined center of human civilization. In this future world, all countries are expected to defer to the CCP's preferences on matters of significance. This is indeed a concept of rule, therefore, but it is a more indirect and idiosyncratic sort of rule than that of the Soviet Union within its 20th Century empire.

The CCP's approach seems to be influenced as much, or more, by ancient Chinese conceptions of imperial tributary deference than by Communism *per se*. In this model of "domination with Chinese characteristics," as it were, Leninist theories of totalizing control under a vanguard party reinforce ancient Chinese thinking of the Legalist tradition.¹⁴ This tradition was "a philosophy first and foremost of power" which "emphasized the importance of setting up the ruler as the sole dispenser of rewards and punishments in the state and the exclusive arbiter of a system of general and objective laws enforced by swift, harsh punishment of all transgressors."¹⁵ Both of these doctrines, moreover, have become deeply entangled with Confucian-influenced imperial self-images of benevolent and omniscient bureaucratic centralism and with civilizational chauvinism.¹⁶

¹³ See Ford, *supra* note 10.

¹⁴ For more on the Legalist tradition in China, see, e.g., Yuri Pines, LEGALISM IN CHINESE PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., Stanford Encyclopedia of Philosophy, 2023), <https://plato.stanford.edu/entries/chinese-legalism/>.

¹⁵ Christopher A. Ford, THE MIND OF EMPIRE, CHINA'S HISTORY AND MODERN FOREIGN RELATIONS 49-50 (2010).

¹⁶ See generally Delia Lin, THE CCP'S EXPLOITATION OF CONFUCIANISM AND LEGALISM, (Willy Wo-Lap Lam, ed. Routledge Handbook of the Chinese Communist Party, 2017), at 47.

As will be discussed further, the CCP's conception of order is also one that the CCP pursues both domestically within China *and*, to a lesser but increasing degree, internationally. Close in—toward the Sinic geographic and civilizational core—this model of rule requires an essentially totalitarian degree of discipline. But farther out—toward what Chinese thinkers long characterized as an essentially barbarous periphery—it asks less, though it still demands performative rituals of tributary deference.¹⁷ In one form or another and to one degree or another, the PRC's strategic objective of a new, Sinocentric world order involves the imposition of patterns of deference upon *all* other players in the global system.

Notably, the CCP's desired strategic end-state requires demanding such deference from the U.S. The CCP wants this deference because it is *America's* current global role and status that is felt to be the primary obstacle to China claiming the central guiding role in international affairs that it feels to be its birthright, and of which Chinese nationalists have long felt their country was robbed in the mid-19th Century.¹⁸ In other words, the CCP cannot have China be what it wants China to be unless and until it *replaces the U.S.* as the most important and most central player in the international order.

<https://china.usc.edu/sites/default/files/forum/1%20CCP%20Confucianism%20vs.%20Legalism%20chapter.pdf>.

¹⁷ See Ford, *supra* note 10 at 10, 19–20, 22.

¹⁸ See *generally History, Ambition, and Technology: The CCP's Challenges to U.S. Export Control Policy: Hearing Before the U.S. House of Representatives China Task Force*, 116th Cong. (2020) (statement of Assistant Secretary of State Christopher Ford) (observing that one key “prong of the CCP's non-democratic—indeed, anti-democratic—legitimacy narrative is that Party officials wish their dictatorship to be seen as uniquely able to restore China to the position of global centrality and status that its grievance-nursing regime propaganda depicts evil Westerners as having stolen from China in the 19th Century”).

B. “Rules-Based” Westphalian Legality

It is worth pointing out that the nature of the global order that China wishes to create is different from the so-called “open, rules-based international order” of the present day. It is not always clear what is meant by this “rules-based order,”¹⁹ but it appears to describe an international system of sovereign states that, despite inevitable differentials in size, wealth, and power:

- (1) Interact for all official purposes on the basis of formal, juridical coequality;
- (2) Are generally free to structure their diplomatic, political, and economic affairs as they wish; and
- (3) Relate to each other through a system of rules and norms that is articulated in heavily (though not exclusively) legal terms and that has its ostensible foundation in those states’ formal coequality.

Speaking loosely, one might call this the “Westphalian” conception of international order, for it originated in the Peace of Westphalia in 1648, which ended the calamitous period of the Thirty Years’ War in Europe and is often described as the conceptual starting point for the modern state system.²⁰

¹⁹ See Ben Scott, *But What Does ‘Rules-Based Order’ Mean?*, THE INTERPRETER (Nov. 2, 2020), <https://www.lowyinstitute.org/the-interpreter/what-does-rules-based-order-mean>.

²⁰ See generally Ove Bring, *The Westphalian Peace Tradition in International Law*, 75 INT’L L. STUD. 57, 58 (2000) (noting that “in a longer term perspective, the peace [of Westphalia] contributed to the emergence of the modern international system of territorial and sovereign States, a system where actors were (and are) maximizing their own State interests, while at the same time striving for a balance of power”). It is true that scholars such as Christian Reus-Smit have persuasively argued that modern international society is in some ways different from the original Westphalian order, inasmuch as over the last two and a half centuries “the moral purpose of the modern state has become increasingly identified with the augmentation of individuals’ purposes and

It is beyond the scope of this article to spell out the specifics of the various rules and norms that have accumulated to form what Western diplomats now sometimes loosely call the “rules-based international order” challenged by China.²¹ To be sure, that phrase is often used to refer more narrowly to the global institutions established after the Second World War by the U.S. and its victorious Western allies. This system, it has been said,

is predicated on a set of norms and principles pertaining to global security, the economy, and governance. It consists of: a set of rules encouraging peaceful, predictable, and cooperative behavior among states that is consistent with liberal values and principles; formal institutional bodies, such as the United Nations (UN) and NATO [the North Atlantic Treaty Organization], that serve to legitimize and uphold these rules, and provide a forum to discuss and settle disputes; and the role of powerful democratic states to help preserve and defend the system.²²

For the most part, however, these norms and legal rules ultimately trace their conceptual genealogy to post-medieval European thought around the time of the Westphalian order’s formation. It was then, for instance, that scholars such as the Dutch jurist Hugo Grotius wrote what became foundational international legal texts articulating principles such as freedom of

potentialities” rather than revolving around the preservation of “a divinely ordained, rigidly hierarchical social order.” Nevertheless, for present purposes, the most salient point is that China’s Sinocentric vision powerfully contradicts key elements of *all* conceptions of the international system that have prevailed since Westphalia. Christian Reus-Smit, *THE MORAL PURPOSE OF THE STATE: CULTURE, SOC. IDENTITY, AND INSTITUTIONAL RATIONALITY IN INT’L REL.* 8–9, 95–97, & 123 (1999).

²¹ See Norah O’Donnell, *Secretary of State Antony Blinken on the threat posed by China*, CBS NEWS (quoting Blinken that “[o]ur purpose is not to contain China, to hold it back, to keep it down. It is to uphold this rules-based order that China is posing a challenge to. Anyone who poses a challenge to that order, we’re going to stand up and – and defend it.”), <https://www.cbsnews.com/news/antony-blinken-60-minutes-2021-05-02/> (last visited May 2, 2021).

²² Matthew Kroenig & Jeffrey Cimmino, *GLOBAL STRATEGY 2021: AN ALLIED STRATEGY FOR CHINA*, ATLANTIC COUNCIL STRATEGY PAPERS 15–16 (2020).

the seas²³ and states' fundamental right of self-defense against aggression.²⁴ The Westphalian ethos underlies the current international legal system.

The state-sovereign units of the Westphalian system were once spoken of dynastically, in terms of divine-right kingship.²⁵ In its modern form, the disparate state-sovereign units of the Westphalian system are deemed to be an outgrowth of the operation of certain universal principles, for these state units are said to represent a sovereign people which possesses a basic right to autonomy vis-à-vis other such peoples, as well as the ability to choose its leaders and (for the most part) its form of government.²⁶ In today's world, even regimes that fear and loathe

²³ Grotius' works *De Praedae Commentarius* (Commentary on the Law of Prize) and *Mare Liberum* (Freedom of the Seas), for instance, became "seminal works in the development of modern approaches to international law of the sea." See Christopher A. Ford, *Preaching Propriety to Princes: Grotius, Lipsius, and Neo-Stoic International Law*, 28 CASE WESTERN RESERVE J. OF INT'L L. 313, 339-40 (1996) (discussing Hugo Grotius, *Mare Liberum* [The Freedom of the Seas] (Ralph van Deman Magoffin trans. 1916) in *Grotius Reader* (L.E. van Holk & C.G. Roelofsen, eds. 1983), and Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres* [The Law of War and Peace in Six Books] (Francis W. Kelsey trans. 1925)).

²⁴ See Grotius, *De Jure Belli Ac Pacis Libri Tres*, bk. I, ch. II, §1, 1, at 51 ("[E]very animal from the moment of his birth has regard for itself and is impelled to preserve itself") (quoted in Ford, *Preaching Propriety to Princes*, supra note 23, at 343 n.172).

²⁵ Belief in the divine right of kings became an especially important idea in European history after the Protestant Reformation, which also touched off the religious warfare that finally ended on with the Peace of Westphalia. As summarized in Figgis' classic history, the essential notion of the divine right of kings was that "the king owes his position directly to Divine appointment, and its therefore accountable to God alone, and not to the Pope." JOHN NEVILLE FIGGIS, *THE DIVINE RIGHT OF KINGS* 128 (Cambridge Univ. Press 1914).

²⁶ As briefly summarized by the Max Planck Encyclopedia of Comparative Constitutional Law, for instance, "Popular sovereignty is a doctrine postulating that government derives its power from those it governs. Most definitions concur in conceptualizing 'the people' as a collective entity vested with the final decision in a certain political setting. . . . In its broadest sense a common denominator for the democratic theories of sovereignty, popular sovereignty stands in antithesis to the theocratic doctrines under which the source of sovereign power is supernatural, understood as a divine right of absolute

democratic accountability usually at least pretend to represent the will of the people. The lengths to which they go to fix or pantomime the electoral process is the tribute their authoritarian vice pays to democratic virtue.²⁷

This principle of autonomous choice-making is taken as a universal value that undergirds and makes possible the individualism of the separate state units, which provides a foundation for state prerogatives of autonomy and non-interference in internal affairs.²⁸ The system is thus simultaneously universalist, in that all “peoples” are said to have the right to determine their own affairs, while being obliged to treat each other as formally coequal sovereigns, and particularistic, in that the process-value of sovereign rights empowers each unit to maintain a self-conscious and distinctive separateness to whatever degree it wishes.

There are multiple conceptual problems associated with this Westphalian vision, not least of which is the question-begging way it tends to duck hard questions about which particular clumps of humanity count as sovereign peoples (e.g., who is the relevant “self” in self-determination?). Additionally, there is the problem of how governments can presume to act on behalf of such groups as the primary loci for the exercise of autonomy in the system if such leaders have not been freely and fairly chosen by the individual members of those groups. In this respect, both international legality and the state system itself might be said to

monarchs (absolutism).” Anthony Matthew Dima Murphy, *Popular Sovereignty*, MAX PLANCK ENC. OF COMP. CON. LAW (May 2022),

<https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e423>.

²⁷ See generally Christopher Ford, *Democratic Legitimacy and International Society: Debating a ‘League of Democracies’*, 3 HUM. RTS., HUM. SEC., AND STATE SEC. 1, 15 (Saul Takahashi, ed.) (Santa Barbara: Praeger, 214) (discussing efforts by various authoritarian regimes to appear to have democratic legitimacy).

²⁸ All states “[b]eing equally sovereign,” it has been observed, “a state is not subject to any form of foreign interference in its own domestic matters except by consent.” See Jianming Shen, *The Non-Intervention Principle and Humanitarian Interventions Under International Law*, 7 INT’L LEGAL THEORY 1 (Spring 2001).

suffer from an “origins problem,” inasmuch as they only represent a legitimate system of order if they can piggyback upon the antecedent existence of historically contingent things that they take for granted without being able to explain. In particular, they presume both: (a) the existence of discrete, sovereignty-deserving national peoples within definable territories; and (b) legitimate and continuing means of determining who is able to exercise authority within such territories and on behalf of such peoples.²⁹

Despite such conceptual challenges, this Westphalian system of states-based order has put down deep roots. Though historians such as Benedict Anderson are undoubtedly right that nation-state communities are ultimately only “imagined” ones,³⁰ these are communities that are powerfully imagined by a great many people, the subjective reality of which has been perhaps the single most powerful organizing and politically motivating force in human affairs for centuries. They are real enough, one might say, that an entire functional world system can be, and has been, built around them—and, despite occasional predictions of its

²⁹ Cf. Ford, *supra* note 27, at 27. This is not necessarily to suggest, however, that it is *not possible* to provide coherent foundations for these assumptions, merely that traditional international legality has not compellingly done so. If one were to focus upon the antecedent value of individual human sovereignty, however, it might well be possible to describe a system that vindicates this human sovereignty while yet providing a solid foundation for a rules-based system of states very much like the present one, *provided that* the individual interacting states that form this system are and remain congruent with the felt identities and governance preferences of the populations thereof. In such a construct, democratic consent freely and fairly given could both validate the existence of any given set of “national”-territorial frontiers and ground the authority of the leaders who speak on behalf of each “nation” thus defined. Rules agreed by the community of states thus constituted, moreover, could be defended as legitimately enacted international law without the awkwardness created by international legal positivism’s willingness to permit laws, in theory, to be made by “a congress of tyrants” who just happen to have seized control of a sufficient number of governments. (International law as decided by and among democracies, however, would presumably have to be privileged in some fashion over rules merely agreed among an assembly of autocrats, or even over those agreed by a mixed body.) This, of course, is not the system we have today.

³⁰ See BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1991).

demise,³¹ the idea of the nation remains a powerful force in global affairs.³² The structured modalities of their interaction as formal coequals in a generally sovereignty-privileging global order can be said to constitute our current “rules-based international order.”

C. China’s Challenge to Westphalian Legality

This basic understanding can help us see how China challenges that order. On its face, the PRC would seem to be a fervent devotee of the Westphalian system. After all, during the decrepit last years of the Qing Dynasty and after the Dynasty’s fall—when China felt beset by European and Japanese imperialist depredations—many nationalist Chinese thinkers embraced the core international legal principles of sovereignty and “non-interference” in other states’ internal affairs that are, in theory at least, so central to the Westphalian construct.³³ Such discourse seemed to offer a chance to repurpose the West’s own norms against it, and thereby help to protect China from states and empires that had become much more powerful than it was.³⁴ Going back as least as far as the Bandung Conference of 1955,³⁵ CCP-ruled China has claimed that sovereign autonomy and the related principle of “non-interference” in the internal affairs of

³¹ See Rana Dasgupta, *The Demise of the Nation State*, THE GUARDIAN (Apr. 5, 2018), <https://www.theguardian.com/news/2018/apr/05/demise-of-the-nation-state-rana-dasgupta>.

³² See generally NATIONALISM IN A GLOBAL ERA: THE PERSISTENCE OF NATIONS (2011); see also Stephen D. Krasner, *The Persistence of State Sovereignty*, in INTERNATIONAL POLITICS AND INSTITUTIONS IN TIME 39 (2017).

³³ See Ford, *supra* note 15, at 170–72.

³⁴ *Id.*

³⁵ See *Bandung Conference (Asian-African Conference), 1955*, OFFICE OF THE HISTORIAN, U.S. DEP’T OF STATE, <https://history.state.gov/milestones/1953-1960/bandung-conf> (last visited Aug. 19, 2023).

other sovereign states are at the core of its philosophy of foreign affairs.³⁶

But there are reasons to question the genuineness, as opposed to the mere tactical utility, of China's proclaimed commitment to those principles. The value system of sovereignty and non-interference was *useful* to early-20th Century Chinese nationalists bent upon recovering a fuller measure of Chinese autonomy in the face of the "unequal treaties" opportunistically imposed by European and Japanese power in the previous century.³⁷ These principles were also useful for CCP leaders keen to protect their own regime after it emerged as the winning side in China's civil war in 1949. Beijing also found this discourse advantageous as it maneuvered for diplomatic advantage—as it did at Bandung—in a world filling up with young states seeking to assert their own legitimacy (and seeking support against imperialist power) during the era of European decolonization.³⁸ Today, Chinese officials—when speaking to international audiences, especially in the developing world—still routinely declaim their fervent support for these ideas. Xi Jinping himself, for instance, has said that

"Sovereign equality has been the most important norm governing state-to-state relations over the past several centuries and the cardinal principle observed by the United Nations and all other international organizations. The essence of sovereign equality is that the sovereignty and dignity of all countries, whether big or small, strong or weak, rich or poor, must be respected, their internal affairs

³⁶ Premier Zhou Enlai, for instance, offered a "seven-point foundation" for a peaceful international environment in his remarks at Bandung. The third point of the seven was "mutual non-interference or non-intervention on internal affairs." Zhou Enlai, Speech at the Pol. Comm. of the Afro-Asian Conf. (Apr 23, 1955).

³⁷ See Ford, *supra* note 15, at 193–96.

³⁸ See generally CHEN YIFENG, BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW 177 (2017).

are not subject to interference, and they have the right to independently choose their social system.”³⁹

Yet to the extent that gradients of power have permitted it more leeway to act on deeper inclinations and pursue more strategic objectives, China has never historically scrupled to interfere in the internal affairs of other states.⁴⁰ Interference is far from a Chinese monopoly, and the U.S. and European powers have frequently traduced the “non-interference” principle in their own foreign policy behavior.⁴¹ There is, however, an important distinction.

If and when Western states do engage in such interference, they tend at least to *claim* to vindicate a higher principle still somehow rooted in the legitimacy discourse of the state system. This higher principle, it is stated or implied, temporarily overrides the value of state sovereignty, which remains important but must occasionally be set aside in exigent circumstances. It might be, for instance, that interference occurs to punish a particular government for taking power through a military coup or electoral fraud, thus vindicating the idea of ensuring legitimate authority to speak and act on behalf of a sovereign people in the state system.⁴² In other cases, a claim

³⁹ Speech by Xi Jinping at the United Nations Office in Geneva, “Working Together to Build a Human Community with a Shared Future,” (Jan. 18, 2017), in 2 XI JINPING, SPEECHES ON DIPLOMACY (2022), at 17, 20.

⁴⁰ See Ford, *supra* note 10, at 6–8.

⁴¹ See *generally* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 106, ¶ 202 (June 27) (noting, of the non-interference principle, that “examples of trespass against this principle are not infrequent”).

⁴² Examples of such arguments in the modern world include U.S. sanctions against the government of Aleksander Lukashenko in Belarus after his fraudulent re-election in August 2020, as well as recent threats by the Economic Community of West African States (ECOWAS) to intervene in Niger after the July 2023 military coup against its elected president. See Jennifer Hansler, *Biden Administration takes action against Lukashenko on third anniversary of fraudulent election*, CNN (Aug. 9, 2023), <https://www.cnn.com/2023/08/09/politics/lukashenko-belarus-us-action->

might be made that actions are taken to preempt terrorist attacks or weapons of mass destruction threats, thus vindicating the value of self-defense,⁴³ which is a core value of the Westphalian system as the means by which states preserve themselves.

Interference to stop egregious human rights abuses against a minority population is a more conceptually complicated case because it could be seen as reducing the sovereign autonomy of a national majority. Even there, however, the claim to override national sovereignty purports to be vindicating a *higher* universal principle of *human* sovereignty.⁴⁴ And indeed there have been multiple examples in which international military intervention into a country has been defended on such grounds: “to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel” (bombing campaign against Muammar Qaddafi’s government in Libya in 2011);⁴⁵ “to halt [a]

biden-administration/index.html; S.B. Lawal, *Niger coup: divisions as ECOWAS military threat fails to play out*, ALJAZEERA (Aug. 6, 2023), <https://www.aljazeera.com/news/2023/8/6/niger-coup-divisions-as-ecowas-military-threat-fails-to-play-out>.

⁴³ Examples of such arguments in the modern world include the U.S. claim to be acting in self-defense when invading Afghanistan in late 2001, as a result of terrorist attacks carried out against the United States by groups based there. *See* Resolution to Authorize the Use of United States Armed Forces against Those Responsible for the Recent Attacks Launched against the United States, Pub. L. No. 107-40, 115 Stat. 224 (arguing that “such acts [as those committed on September 11] render it both necessary and appropriate that the United States exercise its rights to self-defense”).

⁴⁴ As noted earlier, Christian Reus-Smit distinguishes the modern international system from the post-Westphalian era of European absolutism on the grounds that with the former, the state has been reconceived to serve “the people” and the system views “legitimate statehood and rightful state action . . . [as being] tied to the augmentation of individuals’ purpose and potentialities.” *See generally* Reus-Smit, *supra* note 20, at 120–54. Through this prism, it is not hard to imagine the development of concepts whereby, in at least *some* instances, violation of the sovereignty of an individual state might be temporarily necessary to protect its peoples’ ability to pursue such individual purposes and potentialities.

⁴⁵ Security Council Res. 1973 (March 17, 2011), S/RES/1973, at ¶ 10.

humanitarian catastrophe that was then unfolding”⁴⁶ (NATO bombing of Serbia in 1999); to “stop ... brutal atrocities that threaten tens of thousands” of civilians (U.S. preparations for intervention in Haiti in 1994);⁴⁷ or “to protect [civilian] communities ... from possible attacks by [local] government forces” (enforcement of “no-fly zones” in Iraq after 1992).⁴⁸

By contrast, China has been increasingly brazen in asserting its own peculiar privilege to meddle in other states’ affairs—not in the name of a higher value (*e.g.*, stopping mass murder or self-defense against attack), but instead *to shape how the rest of the world thinks about and behaves towards China*. This phenomenon will be discussed further below, but it is worth flagging here to emphasize how remarkable a departure such an approach is from the state-sovereigntist Westphalian construct, even in that construct’s more qualified modern forms.

The CCP’s open commitment to interfering with other states’ sovereignty to shape discourse about China is a phenomenon to which this author was first pointed while attending a conference in Beijing in 2012, at which

a well-known PLA general explained that it was *not* “interference” in another state’s “internal affairs” for Beijing to make demands about how other states view and depict China and their own history in the Asia-Pacific region, *because these things affect China*. ([It was stated], for example, that the ‘right deviation’ in Japanese politics needs to be suppressed – and it is proper for the PRC to demand this – because right-wing politics in Japan bear upon Sino-Japanese relations.) Such things have external effects, and

⁴⁶ *Kosovo Air Campaign (March-June 1999)*, NORTH ATLANTIC TREATY ORGANIZATION, https://www.nato.int/cps/en/natohq/topics_49602.htm, (last updated May 17, 2022).

⁴⁷ William J. Clinton, *Address to the Nation on Haiti*, UNIV. OF CALIF. SANTA BARBARA <https://www.presidency.ucsb.edu/documents/address-the-nation-haiti>.

⁴⁸ *No-Fly Zones: Areas of Protection*, ABC NEWS (May 10, 2001), <https://abcnews.go.com/International/story?id=79981&page=1>.

therefore are not “internal” affairs; China may make demands with regard to matters that affect China.⁴⁹

This attitude has become only more prevalent since that time. The CCP, in short, feels that the world’s attitude toward China is *China’s* business, and *China’s* prerogative to shape.⁵⁰ Nor does the Party accept that such permissiveness about interference in internal affairs is a general rule, either. To the contrary, the CCP in no way concedes anyone *else’s* right to shape discourse in China. That *would* be “interference!” Rather, this supposed privilege of thought control is a China-specific one, a carve-out from the sovereigntist rules that govern everyone else. China asserts for itself a special position within the system of world order in which it is allowed to set the terms for discourse everywhere, at least as pertains to China.

D. Ancient Antecedents

This exceptional derogation from state-sovereign principles might seem shocking through the Westphalian prism, but in the Chinese context it is less novel than it sounds. Indeed, this approach arguably has deep connections to some very ancient ideas about how political authority tended to be conceptualized in Confucian society. Specifically, ancient Confucian thinking—while generally speaking more directly to issues of personal and social ethics than to those of politics—tended to make four core assumptions about power, order, and authority within human society.

First, civilization existed in gradients, from a civilizational core out to an essentially barbarous periphery. These gradations were not strictly geographic, however, but were instead related to a given population’s degree of Sinicization—that is, the extent to which its members had imbibed Chinese culture, understood the

⁴⁹ See Christopher Ford, *Sinocentrism for the Information Age: Comments on the 4th Xiangshan Forum*, NEW PARADIGMS FORUM (Jan. 13, 2013), <https://www.newparadigmsforum.com/p1498>.

⁵⁰ See generally CHRISTOPHER FORD, CHINA LOOKS AT THE WEST 449–60 (2015).

Chinese language, and lived according to Confucian ethics. In traditional thinking, in fact, these gradients determined not merely the degree to which a people might be considered civilized, but also the degree to which they might be deemed human at all. The mark of full humanity was to live according to the precepts; to the degree that one did not do so, one was not fully human. At the uncivilized margin of the system, people were, in moral terms, no more virtuous or deserving than animals.

Second, political authority was a function of the virtue of the would-be ruler and essentially *self-assembled* around that ruler. The extent of a leader's dominion, moreover, was proportional to the degree of his virtue, so that the superlatively virtuous ruler would naturally and inevitably tend to accrue universal dominion. This conception makes the ancient Chinese system of order inherently monist, in the sense that if the Emperor laid claim to superlative virtue—as every Chinese dynasty indeed invariably insisted, depicting this virtue as the reason *it* had come to power rather than rival claimants, or why it had succeeded a corrupt predecessor—it necessarily followed that no *other* ruler could have as much. By the same token, this conception also required that no self-respecting dynasty could admit that it existed in a relationship of genuine coequality with any other ruler. As the ancient philosopher Mencius made clear in quoting Confucius himself, there can no more be another true emperor on the earth than there could be two suns in the sky.⁵¹ In other words, this system could not accept any Westphalian concept of formally coequal separate sovereignties, for it was impossible to admit that any other unit *could* be of genuinely equivalent virtue. Rather, all must be depicted as existing in at least some degree of

⁵¹ See Mencius, *Translation, Commentary, and Notes* (Robert Eno, trans.) (May 2016), § 5A.4, at 105 (quoting Confucius that “There are not two suns in the heavens, and the people do not have two kings.”), https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23423/Mencius_%28Eno-2016%29.pdf?sequence=2&isAllowed=y.

status-subservience to the Son of Heaven who sat at the top of the Chinese system.

Third, the role of any component in the Confucian system of order—from a behavioral perspective—was to understand the duties and responsibilities inherent in *its* particular place therein. Indeed, these duties and responsibilities essentially *defined* unit components, and were encoded in the articulation of each component's place. To describe someone as a "son," for instance, conveyed both to him and to others a web of relationships and responsibilities inherent in the idea of being a son. The act of naming, in other words, both defined and circumscribed the range of behaviors appropriate to such a person and his status, prerogatives, and duties vis-à-vis all other types of persons. Appropriately naming something was thus socially constitutive of that thing.

Fourth, all components of the system of order were expected to understand their place and role in that system and to conform their behavior to the various roles and expectations associated with that place and role. This was the key to ensuring harmony and order in the system as a whole, and to deviate from such expectations was to create disharmony. Creating disharmony, in fact, was perhaps the cardinal sin that anyone could commit, for it imperiled the entire order. The virtuous ruler generally ruled simply by the example of his benevolent virtue, trusting all to play their assigned roles in ensuring harmony. If deviant behavior should nonetheless occur, however, it was the responsibility of the ruler to chastise the malefactor, to which end it was appropriate to use whatever means would be necessary to restore harmonious compliance.⁵²

⁵² The four points in this account are drawn, generally, from the author's work elsewhere. See Ford, *supra* note 15, at 29–38; 79–88; see also Christopher Ford, "Past as Prism: China and the Shock of Plural Sovereignty," *Joint Forces Quarterly*, no. 47 (4th Quarter 2007), at 14–21, <https://apps.dtic.mil/sti/pdfs/ADA521057.pdf>; Ford, *supra* note 50, at 85–88; Ford, *supra* note 11, at 5–7.

While Confucian thinking was not primarily a tradition that spoke to international politics, it is not hard to see how these assumptions might have dramatic implications. To the degree that ancient China did not engage much with the non-Chinese world beyond its borders, these concepts may largely have been confined to providing an ordering construct for domestic society.⁵³ But when China *did* engage with the outside world, these concepts have provided a framework that helped structure how China has approached that world.

Where outside barbarians occasionally proved resistant to Sinicization and incorporation into this system of order, and when they were powerful enough to rebuff China's demands that they do so, the Middle Kingdom's ideologists tended to retreat into whatever denials and ahistorical obfuscations were necessary to preserve at least a fig leaf of validation for the monist and Sinocentric worldview. As an example, China's conquest by the Mongols in the 13th Century was later rationalized as proving the universally compelling attractiveness of Chinese culture through the assertion that the rulers of the resulting Yuan Dynasty had adopted that culture upon recognizing its superiority, and thereafter ruled as Chinese emperors.⁵⁴ It was also sometimes rationalized on the theory that the Mongols and Manchus who at various points conquered China weren't really non-Chinese people at all, and instead were simply "minority" Chinese populations.⁵⁵ In this interpretation, China was never conquered and ruled by non-Chinese at all.⁵⁶ The idea that China had for significant periods of time been incorporated as just another component of *someone else's* highly successful cosmopolitan and multi-ethnic empire had to be denied and reimagined.

⁵³ Cf. *How did Confucianism win back the Chinese Communist Party?*, *The Economist* (June 23, 2021), <https://www.economist.com/the-economist-explains/2021/06/23/how-did-confucianism-win-back-the-chinese-communist-party>.

⁵⁴ See Ford, *supra* note 15, at 100–05.

⁵⁵ *Id.*

⁵⁶ *Id.* at 268.

Where the Middle Kingdom's actual power vis-à-vis its neighbors permitted it the freedom to act on Confucio-ideological predilections, however, China has tended to insist upon, and has tried to enforce, the establishment of Sinocentric order-systems of ritualized deference around itself – thus trying to some degree to replicate the system of “harmonious” order beyond its own frontiers.⁵⁷ This, for instance, was the ideological core of the so-called “tributary system” through which the Qing Dynasty—ironically, itself also a conquest dynasty established by peoples from outside China, in this case the Manchus—tried to organize relationships with the rest of the world, at least until those conceits ran painfully aground on the rocks of European power in the late 19th Century.⁵⁸

One should be careful not to engage in historical or cultural determinism, which tends to deny human agency and ignore the tendency of complex social systems to evolve and change over time. Such determinism can lead the observer to assume an illusory constancy and indulge in misleading oversimplifications that can poison serious analysis. That said, it is also the case that traditional culture and history *can* have great weight and inertia, and it can at least *help* shape the attitudes and behaviors of those who come later. It is this author's contention that these ancient Confucian-inflected attitudes toward authority and power—and the ideological monism they reflect—still exert a powerful influence upon Chinese thinking and behavior in the modern world notwithstanding, and sometimes reinforced by, the complicated admixture of Marxist-Leninism and other strains of thought from outside China.⁵⁹

⁵⁷ See FORD, *supra* note 50, at 299–311. Despite China's self-serving myths of its own peaceable Confucian benevolence, the Empire was never historically unwilling to act with military force when its power gave it the option. See generally, e.g., ALISTAIR IAN JOHNSTON, CULTURAL REALISM: STRATEGIC CULTURE AND GRAND STRATEGY IN CHINESE HISTORY (1995).

⁵⁸ See Ford, *supra* note 15, at 94–139.

⁵⁹ See generally *id.* at 9–18.

It is also this author's view that these ancient monist traditions of Chinese thought help shape the CCP's vision of the future system of order that a rising, self-confident PRC wishes to create, and which China's present-day power and wealth now seem to be encouraging Beijing to pursue openly⁶⁰ as a *replacement* for the "rules-based order" we know today. These traditions underlie, for instance, the distinction suggested above between more Soviet-style concepts of direct control and what one might call more "Sinic" conceptions of order in which the central player simply demands a semi-ritualized deference from others.⁶¹ Despite decades of propaganda tropes about "non-interference," the CCP's vision of the future is in many ways one of a post-Westphalian system of order that rejects the basic conception of coequal sovereignty—at least as applied to China, at any rate—and insists upon a formally *unequal* status hierarchy.

E. Sinocentric Sovereignty: Back to the Future

Notably, this conception of Sinocentric world order is not merely a significant departure from the Westphalian conception of separate but juridically coequal national sovereignties that undergird modern international law. It also represents the return to an earlier, monist, and hierarchical way of thinking reminiscent of Europe in medieval times.

The idea of "sovereignty," in the way Harold Laski once phrased it, as "an ultimate territorial organ which knows no superior," was originally not about the separation of political units *per se* but rather about spiritual dominion *over* such units.⁶² To the medieval European mind, the idea of "a world organized into

⁶⁰ On the waning of what has been called China's former prudentially cautious "Taoist nationalism" in the days of Deng Xiaoping and the rise of more assertive CCP policies vis-à-vis the non-Chinese world, see FORD, *supra* note 50, at 391–411; See also RUSH DOSHI, *THE LONG GAME: CHINA'S GRAND STRATEGY TO DISPLACE AMERICAN ORDER* (Oxford: Oxford University Press, 2021), at 159–259.

⁶¹ Cf. Heath et al., *supra* note 10, at 96–97 & 102; Ford, *supra* note 10, at 18–22; Ford, *supra* note 15, at 274–78.

⁶² HAROLD J. LASKI, *THE FOUNDATIONS OF SOVEREIGNTY AND OTHER ESSAYS* 1–2 (1921).

a set of sovereign states was broadly unknown.”⁶³ Instead, in this ancient vision, “[h]umanity found its ‘oneness’ not in human rulers or the geographic reaches of their power but rather in the *Respublica Christiana*, the pervasive unity of God (*jus divinum*).”⁶⁴

The Middle Ages thus had a clear conception of sovereignty, but it was not plural. Rather, it was singular. And its locus, at least in Western Europe, was the Catholic Church, not the secular phenomena of kings or their kingdoms. Therefore, there were bitter controversies between successive popes and the most important dynastic rulers of the period, especially the Holy Roman Emperors who quarreled with Rome in the famous “Investiture Controversy” of the 11th and 12th Centuries.⁶⁵ Despite such squabbles, sovereignty was for a long time conceived in monist terms, since a deep pluralism would have been threatening to the fundamental integrity of the Christian community. “An ultimate unity of allegiance was a guarantee of order.”⁶⁶

Over time, however—in conjunction with the degradation of the Renaissance papacy, the rise of increasingly absolutist rulers, and the division of Christianity into rivalrous factions with the Protestant Reformation—sovereignty was reconceptualized. Specifically, it became territorial, first lodging in the person of an absolute monarch and later migrating to the nation-state as a whole. Already, by the mid-16th Century, the French legal scholar Jean Bodin could declare that “Majestie or Soveraignty is the most high, absolute, and perpétuall power over the citisens and subjects in a Commonweale.”⁶⁷

⁶³ *Id.*

⁶⁴ Ronald A. Brand, *Sovereignty: The State, the Individual, and the International Legal System in the Twenty First Century*, 25 HASTINGS INT’L AND COMPAR. L. REV. 279, 281 (2002).

⁶⁵ See Sandy B. Hicks, *The Investiture Controversy of the Middle Ages, 1075-1122: Agreement and Disagreement Among Historians*, 15 J. OF CHURCH AND STATE 5, 5 (1973).

⁶⁶ Laski, *supra* note 62, at 5.

⁶⁷ Brand, *supra* note 64, at 281–82.

The conception of sovereignty was also secularized, as one can see in the writings of Thomas Hobbes. In his *Leviathan*, Hobbes imagined a social contract being reached among the individual citizens of a state to lodge absolute power in a single ruler, “called Sovereigne, and said to have *Sovereigne Power*,” so that “every one besides [this ruler], [is] his Subject.”⁶⁸ And so it was that over time, international law came to “attribute[] to the states certain inalienable rights, as if they were individuals,” including “(1) the right to existence or preservation, *i.e.*[.] survival; (2) the right to independence or sovereignty; (3) the right to juridical equality, *i.e.*[.] equality in law; (4) the right to be respected; and (5) the right to international communications.”⁶⁹

The edifice of modern international law was built upon this secularized and territorialized notion of sovereignty. It is on the basis of the *state* locus of sovereignty, for instance, that it has become a “longstanding understanding” of international law that “unfettered freedom of action for sovereign states is the default mode of the system, and that such freedom will only be limited where a clear legal rule can be identified to that effect.”⁷⁰ The classic legal articulation of this point is the Permanent Court of International Justice’s famous *Lotus* decision of 1927.⁷¹ This is why international law is generally thought of merely as *prohibitive* law, in the sense that where it exists and acts, it prohibits rather than authorizes.⁷²

⁶⁸ See generally THOMAS HOBBS, *LEVIATHAN* ch. xvii (1651).

⁶⁹ Oleksandr Merezhko, *The Mystery of the State and Sovereignty in International Law*, 64 SAINT LOUIS UNIV. L.J. 23, 25–26 (2019).

⁷⁰ Christopher Ford, *Law and Its Limits Left of Launch*, 229 MIL. L. REV. 451, 455 (2021).

⁷¹ The S.S. “*Lotus*” (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10, at 18–19 (Sept. 7).

⁷² See, e.g., OFF. OF GEN. COUNS., U.S. DEP’T OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL § 1.3.2.1 (June 2015) (updated December 2016), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.

In this classic conception, because the states are sovereign, they can do what they like unless there exists a rule to the contrary. Such rules can only arise where these sovereigns have *agreed* to be bound, either by express agreement (*e.g.*, in a treaty) or by implied agreement (*e.g.*, through the emergence of customary law).⁷³ Even *jus cogens* rules—the so-called “peremptory” rules or boundary norms of international law, conceived as representing the deepest moral conscience of international society, and which cannot be contravened even by agreement between sovereign states—are, in theory, established by the sovereign states themselves.⁷⁴

By the time legal precedents such as the *Lotus* case were being articulated, the state-territorial locus of sovereignty was already of great importance—not just to the structure of international law but also to the self-conception of the European powers.⁷⁵ Over the rest of the 20th Century, however, state-territorial sovereignty became even *more* important to international order than ever, thanks to the process of

⁷³ Customary international law is said to be “independent of treaty law” and based upon the jurist’s conclusions about what appears to be “accepted as law.” Specifically, customary law can arise where there is “a general practice that is accepted as law,” as evidenced where countries behave in a certain way (state practice) and do so *because they feel that it is legally required for them to do so* (which is known as *opinio juris*). State practice alone, without *opinio juris* – such as where countries simply think it is good policy, expedient, or merely *morally* necessary to behave in a certain fashion – is not evidence of customary international law. See generally, *e.g.*, *Customary International Humanitarian Law*, INT’L COMM. OF THE RED CROSS (October 29, 2010), <https://www.icrc.org/en/document/customary-international-humanitarian-law-0>.

⁷⁴ Vienna Convention on the Law of Treaties Art. 53, *opened for signature* May 23, 1969, 1155 U.N.T.S 331 (entered into force Jan 27, 1980) (defining *jus cogens* norms); see generally Christopher Ford, *Adjudicating Jus Cogens*, 13 WISC. INT’L L.J. 145, 145–46, (1994).

⁷⁵ In 1906, for example, one scholar called the Peace of Westphalia “the most important, and in its results the most enduring, public act of modern history, for from it dates the present political system of Europe as a group of independent sovereign states.” DAVID J. HILL, A HISTORY OF DIPLOMACY IN THE INTERNATIONAL DEVELOPMENT OF EUROPE, II: THE ESTABLISHMENT OF TERRITORIAL SOVEREIGNTY 599 (1906).

decolonization that swept through European colonial empires. Indeed, it formed the basis of the juridical existence and the self-identity of the scores of new entities that now populated the United Nations (“U.N.”), an organization defining itself as being made up of “nations” derived from the “self-determination of peoples” that relate to each other in “sovereign equality.”⁷⁶ Priyasha Saksena, for instance, has recounted the critical “role played by legal ideas, and specifically the concept of sovereignty, in the production of a bounded national space and economy, *i.e.*, in the creation of a nation-state.”⁷⁷ According to Saksena, one particular conception of sovereignty—“that of exclusive, absolute territoriality, focused on the creation of centralised economic units”—became “dominant in the middle of the twentieth century, while drowning out visions of alternative legal orders.”⁷⁸

Today, there are some legal scholars who advance ideas of sovereignty, yet attempt to retreat from the state-territorial absolutism of this conception. Such thinking is evident, for instance, in international efforts to promote the concept of a “responsibility to protect” (“R2P”), under which it is not an infringement of state sovereignty—or at least it may be a permissible one—for outsiders to intervene to avert dire humanitarian consequences. At the so-called World Summit held at the U.N. in 2005,⁷⁹ for example, Member States adopted a document that stopped short of expressly endorsing intervention

⁷⁶ U.N. Charter art. 1, ¶ 2, art. 2, ¶ 1.

⁷⁷ Priyasha Saksena, *Building the Nation: Sovereignty and International Law in the Decolonisation of South Asia*, 23 *J. OF THE HIST. OF INT’L L.* 52, 53 (2020).

⁷⁸ Under its influence, “for many of independent India’s new leaders, centralised control and a consolidation of the nation-state’s territories were obvious necessities for the planned economy and the nationalist development model that they considered to be the basis for building the new nation. This unified national space for development. . . was created through the articulation of the specific legal idea of territorial sovereignty by elite Indian politicians and bureaucrats in two international disputes soon after independence.” *See id.* at 53–54.

⁷⁹ *See id.*

to this end, but clearly advanced R2P thinking.⁸⁰ As summarized by the U.N. Secretary-General's "Special Advisor on the Responsibility to Protect," the R2P concept:

rests upon three pillars of equal standing: the responsibility of each State to protect its populations (pillar I); the responsibility of the international community to assist States in protecting their populations (pillar II); and the responsibility of the international community to protect when a State is manifestly failing to protect its populations (pillar III).⁸¹

To the degree that such thinking (under "pillar III") would legitimize intervention into the "internal affairs" of a sovereign state to protect its citizens from grave harm—potentially harm being inflicted by the government of that sovereign state itself—R2P would indeed represent a significant departure from traditional state-sovereignist norms.

R2P, however, was controversial even at the time, and seems to have become even more controversial in the wake of the international community's failure to intervene to stop a variety of humanitarian horrors in Syria, Libya, Burma, and elsewhere,⁸² and

⁸⁰ G.A. Res. 60/1, 2005 World Summit Outcome, ¶ 138 (Sept. 16, 2005) ("Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility. . . ."); *see also* U.N. Secretary-General, *Report of the Secretary General*, ¶ 132, U.N. Doc. A/59/2005 (March 21, 2005) (arguing that "We . . . must . . . move towards embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities.").

⁸¹ Ivan Šimonović, *The Responsibility to Protect*, U.N. CHRONICLE, <https://www.un.org/en/chronicle/article/responsibility-protect> (last visited Aug. 8, 2023).

⁸² Martin Mennecke and Ellen Stensrud, for instance, have written bitterly of how "[n]ever again" has turned into again and again," pointing to the international community's "mix of unwillingness and inability to prevent atrocity crimes."

partially as a result of the traumas of the U.S. interventions in Afghanistan and Iraq.⁸³ Indeed, one hears less and less about R2P today,⁸⁴ as countries have been unable to agree upon its applicability and the U.N. Security Council has been paralyzed by Chinese and Russian vetoes.⁸⁵ On the whole, the modern international legal system remains resolutely statist, and committed to the fundamentally Westphalian conception of sovereignty existing in plural form: a world of separate and formally coequal nation-states.

Martin Mennecke & Ellen E. Stensrud, *The Failure of the International Community to Apply R2P and Atrocity Prevention in Myanmar*, 13 GLOB. RESP. TO PROTECT, 111, 111 (2021).

⁸³ See Dexter Filkins, *The Moral Logic of Humanitarian Intervention*, NEW YORKER (Sept. 16, 2019), <https://www.newyorker.com/magazine/2019/09/16/the-moral-logic-of-humanitarian-intervention>. (Arguing that “the moral case for intervention is only as strong as the practicality of the mission itself. There is no moral case for doing something you’re not able to do,” and that “[t]he biggest reason memoirs from the Obama Administration tend to avoid lingering on humanitarian intervention is simply that the record provides little to brag about: a disaster in Libya and in Syria, and a quagmire in Afghanistan, where the prospects of millions of women, empowered by the removal of the Taliban, hang in the balance. In Iraq, Obama’s decision to withdraw American troops, against the advice of his military, opened the door to ISIS, whose fighters massacred thousands of Yazidis and Christians, and other minorities”).

⁸⁴ See Daniel Bessner, *The Fog of Intervention*, THE NEW REPUBLIC (Sept. 4, 2019), <https://newrepublic.com/article/154612/education-idealist-samantha-power-book-review> (arguing that R2P – along with its foremost advocate, former U.S. Ambassador to the United Nations Samantha Power – have “fallen from favor . . . with left-wing foreign policy thinkers,” and claiming that Power’s autobiographical memoir “inadvertently demonstrates the lethality of good intentions.”).

⁸⁵ See *The Rise and Fall of the Responsibility to Protect*, COUNCIL ON FOREIGN RELATIONS: WORLD 101, <https://world101.cfr.org/how-world-works-and-sometimes-doesnt/building-blocks/rise-and-fall-responsibility-protect> (last updated Apr. 20, 2023) (Contending that “R2P [has been] Sidelined as World Splits on Balance Between Sovereignty and Human Rights . . . [and that since the Libya intervention of 2011,] China and Russia in particular have used their veto power on the UN Security Council to block other such interventions. As a result, the United Nations has been unable to take or authorize military action to mitigate some of the world’s most violent conflicts.”).

This is why China's effort to assert a countervailing Sinocentric conception *against* the Westphalian notion of state-territorial sovereign order is so significant. When reaching out for diplomatic support from the state units of the contemporary international system, Chinese propagandists frame their rhetoric in ways that make it *sound* as if Beijing's objective is to protect that sovereignty against unspecified depredations (*e.g.*, by a supposedly interventionist and hegemonic U.S.).⁸⁶ As discussed earlier, however, China is actually asking for something quite different: the establishment of a new, Sinocentric global order in which all other states and peoples accept positions *below China* in the global status hierarchy. This would be a modernized, 21st Century analogue to China's ancient network of tributary vassal states, enjoying varying degrees of functional independence, but all expected to make performative demonstrations that they understand their place—and *China's place*—in the system.

To return to Harold Laski's comment that sovereignty is the ideal of "an ultimate territorial organ which knows no superior," one might say that in this Sinocentric conception of order, the fullest form of sovereignty is located in China, and only there. To be sure, other components of the system may for most purposes enjoy *de facto* autonomy, but this is not the case *de jure*, and it is essential to the construct that they understand this: fundamentally *their* "sovereignty" is of a lesser type than that enjoyed by China at the center of the world-system. (This can be seen, for instance, in the aforementioned modern Chinese assumption that Beijing has the right to dictate the terms on which peoples elsewhere think, and act—even domestically—on

⁸⁶ See, *e.g.*, Pjotr Sauer & Amy Hawkins, *Xi Jinping Says China Ready to "Stand Guard Over World Order" on Moscow Visit*, THE GUARDIAN (Mar. 20, 2023), <https://www.theguardian.com/world/2023/mar/20/xi-jinping-vladimir-putin-moscow-ukraine-war>; *China's Foreign Minister Stresses Principle of Non-Interference at UN Debate*, UN NEWS (Sept. 27, 2012), <https://news.un.org/en/story/2012/09/421682> (text of statement by PRC Foreign Minister Yang Jiechi); *The Five Principles of Peaceful Co-existence Stand Stronger*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE ISLAMIC REPUBLIC OF IRAN (June 29, 2014), http://ir.china-embassy.gov.cn/eng/dtxw/201407/t20140702_1894012.htm.

issues about which China cares, but that for others to prescribe standards for China is to interfere in its internal affairs and violate its sovereignty.)

In effect, therefore, this Chinese vision of sovereignty harkens back to the medieval origins of the idea in the systemically pervasive unity of the *Respublica Christiana*. Nothing about the CCP's conceptualization is actually Christian, of course. Nevertheless, if one substitutes an assumed politico-civilizational hierarchy for a sacerdotal focus, one can see echoes here of the moralism of medieval popes who struggled against the Holy Roman Emperors during the Investiture Controversy.

And it is this vision of sovereignty—in many ways a clear repudiation of the Westphalian world order—that can be seen as providing a conceptual framework that unifies a number of elements in China's foreign policy that might otherwise be dismissed as anomalies or cynical opportunism. Even leaving aside Beijing's continuing determination to seize and absorb the thriving democracy of Taiwan,⁸⁷ these aspects are striking.

China today, for instance, asserts sweeping claims of sovereignty over the South China Sea (a.k.a. West Philippine Sea)

⁸⁷ See, e.g., Carlos Garcia & Yew Lun Tian, *China's Xi Vows 'Reunification' with Taiwan*, REUTERS (Oct. 9, 2021), <https://www.reuters.com/world/china/chinas-xi-says-reunification-with-taiwan-must-will-be-realised-2021-10-09/>. The CCP's fixation upon Taiwan is especially ironic, given that this territory was originally added to China only under a dynasty of foreign Manchu conquerors who had overrun China in the late 17th Century (thereby adding China to *their* multinational empire), the Chinese Communist Party never actually controlled Taiwan at any point, and that Taiwan on its face meets the canonical international legal criteria for statehood. See, e.g., Christopher Ford, *Defending Taiwan: Defense and Deterrence*, 2 NATL. INST. FOR PUB. POL'Y 2 (2022); Conference of American States, *Montevideo Convention on the Rights and Duties of States* art 1, Dec. 26, 1933, 165 LNTS 20 ("The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.") <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.html>.

that are disputed by other countries bordering that body of water that stretches far from China's coastline all the way to Malaysia and Indonesia, and which have been declared illegal in arbitration proceedings under the U.N. Convention on the Law of the Sea.⁸⁸ In the Himalayas, China has moved against both India and Bhutan, occupying and building settlements on land claimed by the latter,⁸⁹ while actually attacking Indian troops on land claimed by the former.⁹⁰ China has also maintained its "comprehensive strategic partnership" with Russia throughout Vladimir Putin's war of aggression and territorial annexation against Ukraine,⁹¹ even to the point of denying the right to sovereign independence of those countries that escaped Soviet empire at the end of the Cold War—countries which, according to China's ambassador to France, "have no effective status in international law."⁹²

China has gone so far as to set up more than 100 shadowy offices in a number of foreign countries—including the U.S.⁹³—that serve as *de facto* police stations through which the CCP's security services "monitor, harass and in some cases repatriate

⁸⁸ See *In re The South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, (Perm. Ct. Arb. 2016).

⁸⁹ See Devjyot Ghoshal, Anand Katakam, & Aditi Bhandari, *China Steps Up Construction Along Disputed Bhutan Border*, REUTERS (Jan. 12, 2022), <https://www.reuters.com/graphics/CHINA-BHUTAN/BORDER/zjvqknaryvx/>.

⁹⁰ See Krishn Kaushik, *India Expects More Clashes with Chinese Troops in Himalayas*, REUTERS (Jan. 28, 2023), <https://www.reuters.com/world/india/india-expects-more-clashes-with-chinese-troops-himalayas-document-2023-01-27/>.

⁹¹ See Shannon Tiezzi, *China, Russia Recommit to Close Partnership in the Shadow of Ukraine War*, THE DIPLOMAT (Mar. 22, 2023), <https://thediplomat.com/2023/03/china-russia-recommit-to-close-partnership-in-the-shadow-of-ukraine-war/>.

⁹² The Kyiv Independent News Desk, *China's Ambassador to France Says Former Soviet Countries Have 'No Status in International Law'*, THE KYIV INDEPENDENT (Apr. 23, 2023), <https://kyivindependent.com/chinas-ambassador-to-france-says-former-soviet-countries-have-no-effective-status-in-international-law/> (quoting interview with Chinese Ambassador to France Lu Shaye by Swiss journalist Darius Rochebin).

⁹³ See Press Release, Two Individuals Arrested for Operating Undeclared Police Station of the Chinese Government in Chinatown in Manhattan, U.S. Att'y Off., E.D.N.Y. (Apr. 17, 2023).

Chinese citizens” living abroad.⁹⁴ “Chinese state and private propaganda operations” also plant false stories in Western media “to counter negative narratives about Beijing abroad,”⁹⁵ while CCP agents infiltrate overseas Chinese communities in order to “incorporate citizens of other countries into its vision” of “building a ‘shared future,’”⁹⁶ not least by holding hostage the family members in China of dissidents residing abroad in order to coerce them into toeing the Party line, or even into carrying out espionage.⁹⁷

None of this, of course, is consistent with any real respect for other countries’ sovereignty. But these various policy choices are not mere aberrations, lapses, or idiosyncrasies. They are a result of the belief by officials in Beijing that China has the *right* to encroach upon the sovereignty and autonomy of other countries and peoples in order to validate and ensure global respect for its geopolitical sense of self. After all, the Chinese Foreign Minister Yang Jiechi bristled at criticism of China’s territorial self-

⁹⁴ See Nina dos Santos, *Exclusive: China Operating Over 100 Police Stations Across the World with the Help of Some Host Nations, Report Claims*, CNN (Dec. 4, 2022), <https://www.cnn.com/2022/12/04/world/china-overseas-police-stations-intl-cmd/index.html>. Such activity in the United States, for instance, has already led to federal indictments and arrests. See also Press Release, U.S. Dep’t of Justice, *Two Arrested for Operating Illegal Overseas Police Station of the Chinese Government* (Apr. 17, 2023); Robert Legare, *U.S. Arrests 2 for Allegedly Operating Secret Chinese Police Outpost in New York*, CBS NEWS (Apr. 18, 2023), <https://www.cbsnews.com/news/fbi-china-police-station-new-york-2-arrested-harry-lu-jianwang-chen-jinping/>.

⁹⁵ See Cate Cadell & Tim Starks, *Pro-China Influence Campaign Infiltrates U.S. News Websites*, WASH. POST (July 24, 2023), <https://www.washingtonpost.com/politics/2023/07/24/pro-china-influence-campaign-infiltrates-us-news-websites/>; Sean Lyngaas, *Pro-Chinese Online Influence Campaign Promoted Protests in Washington, Researchers Say*, CNN (July 24, 2023), <https://www.cnn.com/2023/07/24/politics/china-influence-washington-protests/index.html>.

⁹⁶ See Shibani Mahtani & Amrita Chandradas, *In Singapore, Loud Echoes of Beijing’s Positions Generate Anxiety*, WASH. POST (July 24, 2023), <https://www.washingtonpost.com/world/interactive/2023/singapore-china-news-influence-lianhe-zaobao/>.

⁹⁷ See *China Using Families as “Hostages” to Quash Uyghur Dissent Abroad*, BBC (July 31, 2023), <https://www.bbc.com/news/world-66337328>.

aggrandizement in the South China Sea at a meeting of the Association of South East Asian Nations in Hanoi in 2010 by snapping that such criticism was inappropriate because “China is a big country and other countries are small countries, and that’s just a fact.”⁹⁸ All these policy choices result from and illustrate the Sinocentric conception of global order that lies behind the CCP’s revisionist geopolitics, and which stands as a fundamental—if as yet too little recognized—challenge to the Westphalian order.

II. THREATS TO THE UNITED STATES

This CCP vision has important implications for leaders in the non-Chinese world, including the U.S. For one thing, this vision presents a threat to the U.S., and not just in the sense that such a Sinocentric order would, by definition, limit and constrain the independence and autonomy of all other sovereign peoples in the international system by requiring that they always consider and prioritize *China’s* interests and preferences. It also presents threats because this Sinocentric model of rule enforces itself by *punishing* departures from conformity with China’s view of harmonious order—punishments that have historically ranged from mere rhetorical condemnation all the way to direct military attack in the form of what Confucius himself once termed “punitive military expeditions . . . from the son of Heaven.”⁹⁹

Unless the U.S. is content to accept living within the ritualized constraints of an essentially tributary relationship with the PRC—which this author suspects we are not—we can expect

⁹⁸ See John Pomfret, *U.S. Takes a Tougher Tone with China*, WASH. POST (July 30, 2010), <https://www.washingtonpost.com/wp-dyn/content/article/2010/07/29/AR2010072906416.html?sid=ST2010072906761> (quoting Yang Jiechi at ASEAN meeting on July 23, 2010); see also Ben Lowsen, *China’s Diplomacy Has a Monster in its Closet: Ultra-Nationalism is Damaging China’s Credibility as its Ambassadors Indulge in Curious, Chauvinistic and All-too-Official Tirades*, THE DIPLOMAT (Oct. 13, 2018), <https://thediplomat.com/2018/10/chinas-diplomacy-has-a-monster-in-its-closet/>.

⁹⁹ CONFUCIUS, *CONFUCIAN ANALECTS, THE GREAT LEARNING & THE DOCTRINE OF THE MEAN* bk.XVI, at 310 (James Legge trans., New York: Dover, 1971).

to face an enduringly confrontational approach from CCP-ruled China: one that will take advantage of every tool and lever of influence available to it to coerce us into the generalized conformity the CCP desires. China has already had some success in creating what this author has previously termed a “leverage web.”¹⁰⁰ China uses this web of dependencies to reward compliance with the CCP’s vision of a “harmonious” Sinocentric world, as well as to punish departures from that supposed harmony. One sees the use of this leverage web, for instance, in the PRC’s employment of economic pressures to export aspects of its own domestic censorship overseas¹⁰¹ even against foreign citizens and companies, who increasingly face CCP “punishment” for saying things the CPP leaders find disagreeable. Even entire *countries* can now face collective chastisement for failing to conform to Beijing’s political demands, as Australia¹⁰² and Lithuania¹⁰³ have already experienced. As we have recently seen

¹⁰⁰ See, e.g., Ford, *supra* note 11, at 3.

¹⁰¹ See generally Christopher A. Ford & Thomas D. Grant, *Exporting Censorship: The Chinese Communist Party Tries to Control Global Speech about China*, NAT’L SEC. INST. LAW AND POL’Y PAPER (Mar. 2022), <https://nationalecurity.gmu.edu/wp-content/uploads/2022/04/Exporting-Censorship-FINAL-WEB-2.pdf>.

¹⁰² See Lucas Niewenhuis, *The 14 Sins of Australia: Beijing Expands List of Grievances and Digs in for Extended Diplomatic Dispute*, THE CHINA PROJECT (Nov. 18, 2020), <https://thechinaproject.com/2020/11/18/the-14-sins-of-australia-beijing-expands-list-of-grievances-and-digs-in-for-extended-diplomatic-dispute/>.

¹⁰³ See Foreign Ministry Spokesperson Announces China’s Sanctions on Lithuanian Deputy Minister of Transport and Communications Agnė Vaiciukevičiūtė, Ministry of Foreign Affs. People’s Republic of China (Aug. 12, 2022) https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/202208/t20220812_10742448.html (announcing sanctions on a Lithuanian deputy minister for “visit[ing] China’s Taiwan region”).

in both Australia¹⁰⁴ and Canada,¹⁰⁵ PRC-run agents of influence also interfere in other countries' elections.¹⁰⁶

One hopes that such heavy-handed tactics will ultimately backfire—showing the PRC to be a thin-skinned bully with no respect for other countries' sovereignty or political autonomy. Nevertheless, the intention of these CCP campaigns of coercion is clear: Beijing aims to condition the rest of the world into appropriately deferential habits of thought, speech, and behavior.

The CCP, moreover, is constantly seeking to expand the web of generalized asymmetric dependency upon China that it weaponizes to these ends. This aspiration, for instance, can be seen in Xi Jinping's "dual circulation" policy—a concept under which the CCP regime hopes to make China as little dependent as possible upon foreign trade (e.g., through the expansion of domestic demand) while still maximizing the dependence of the rest of the world upon China. As this is described in the Party's

¹⁰⁴ See Abhijnan Rej, *Australia Combats China's Interference Amid Deep Discord in Relations*, THE DIPLOMAT (Nov. 9, 2020), <https://thediplomat.com/2020/11/australia-combats-chinas-interference-amid-deep-discord-in-relations/>.

¹⁰⁵ See Craig McCulloch, *China Reacts to Alleged Chinese Political Interference*, VOICE OF AMERICA (Nov. 17, 2022), <https://www.voanews.com/a/canada-reacts-to-alleged-chinese-political-interference-/6839397.html>. In 2023, moreover, a Canadian lawmaker of Chinese descent announced that PRC officials had been harassing his family in Hong Kong over comments the legislator had made that were critical of the PRC – prompting a formal complaint by Canadian officials to the Chinese government. See Leyland Cecco, *Canadian Lawmaker says China Targeted his Family for Harassment*, THE GUARDIAN (May 3, 2023), <https://www.theguardian.com/world/2023/may/03/michael-chong-justin-trudeau-harassment-canada-china>; Leyland Cecco, *Canada Summons Chinese Ambassador after MP and His Family Harassed*, THE GUARDIAN (May 4, 2023), <https://www.theguardian.com/world/2023/may/04/canada-china-ambassador-summoned-cong-peiwu>.

¹⁰⁶ PRC efforts to meddle in American politics began at least as early as the mid-1990s. See INVESTIGATION OF ILLEGAL OR IMPROPER ACTIVITIES IN CONNECTION WITH 1996 FEDERAL ELECTION CAMPAIGNS: FINAL REPORT OF THE COMMITTEE ON GOVERNMENTAL AFFS., S. REP. NO. 105-67, at 2499-2516 (1998); see also ALEX JOSKE, SPIES AND LIES: HOW CHINA'S GREATEST COVERT OPERATIONS FOOLED THE WORLD 58-64 (2022).

14th Five-Year Plan, “dual circulation” means creating “a strong domestic market and the construction of a trade powerhouse (贸易强国), form[ing] a powerful gravitational field to attract global resources and factors of production ... and accelerat[ing] the cultivation of new advantages to be used in international cooperation and competition.”¹⁰⁷ Another facet of this effort can be glimpsed in Xi Jinping’s frequent paeans to the importance of using efforts such as the Belt and Road Initiative to build ever-greater “connectivity” with the rest of the world through “infrastructure connectivity, trade links, capital flows, and bonds between peoples.” This kind of “greater connectivity,” he has said, “involves every front, is multi-dimensional, and forms a network.”¹⁰⁸

¹⁰⁷ *Outline of the People’s Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035*, GEO. CTR. FOR SEC. AND EMERGING TECH., (May 12, 2021); see also JONATHAN E. HILLMAN, *THE DIGITAL SILK ROAD: CHINA’S QUEST TO WIRE THE WORLD AND WIN THE FUTURE 4* (2021) (noting that “dual circulation . . . aims to continue China’s exports to foreign markets while reducing its reliance on foreign technology domestically”). As an interesting point of historical comparison, it was a key plank of Nazi German policy in the 1930s to create strategic self-sufficiency in raw materials so as to protect Hitler’s regime against international sanctions that it might face in response to aggression against its neighbors—that is, preparing for “blockade resistance” (*Blockadefestigkeit*)—while yet exporting as many high-value manufactured goods to the rest of the world as possible in order to earn foreign exchange with which to help fund rearmament. NICHOLAS MULDER, *THE ECONOMIC WEAPON: THE RISE OF SANCTIONS AS TOOL OF MODERN WAR* 245–46 (2022).

¹⁰⁸ Speech by Xi Jinping, “Deepening Connectivity as Partners and Jointly Building a Community of Common Development and a Shared Future,” (Nov. 8, 2014), in 1 XI JINPING, *SPEECHES ON DIPLOMACY* (2022) at 231, 232–33. See also, e.g., speech by Xi Jinping, “Striving for Greater Progress in Regional Cooperation and Ushering in a Brighter Future for the Asia Pacific,” (Nov. 9, 2014) in *id.* at 239, 242–43 (“We need a blueprint for comprehensive connectivity . . . which includes: hardware connectivity that brings the economies closer and paves the way for an Asia Pacific connected within itself and to the world; software connectivity that enhances alignment and coordination of policies, law, and regulations and creates convenient and effective supply chains; and human connectivity that promotes people-to-people exchanges and fosters friendship and trust.”); speech by Xi Jinping, “Shaping the Future through Asia Pacific

The remarkable growth of the global power projection capabilities of the People's Liberation Army ("PLA")¹⁰⁹ is adding a more worrisome layer of "hard power" military coercive capacity atop this politico-economic "leverage web." Together, all this contributes to the PRC's acquisition of what CCP theorists have described as "comprehensive national power," or ("CNP").¹¹⁰ It is the eventual superlative possession of CNP that these thinkers believe will permit China to restructure the international system around itself and once again occupy the central civilizational and geopolitical position they believe it possessed in the past,¹¹¹ which they still feel to be China's destiny. Xi Jinping and the CCP leadership, in fact, have made this Sinocentric restructuring of global affairs a central plank of their political legitimacy narrative of "national rejuvenation."¹¹²

Partnership," (Nov. 11, 2014), in *id.*, at 250, 252 ("In the face of new conditions, we need to speed up efforts to upgrade infrastructure and build comprehensive connectivity . . . connecting physical structures, rules and regulations, and the hearts and minds of people."); speech by Xi Jinping, "The Leading Role of the Asia Pacific in Meeting Global Economic Challenges," (Nov. 18, 2015), in *id.* at 400, 403 (" . . . [W]e must promote connectivity. The fundamental purpose of connectivity is to facilitate smoother economic circulation in the Asia Pacific, thereby expanding potential economic and social development. Connectivity should be equally emphasized in infrastructure, institutional regulation, and people-to-people exchanges, while the coordination of policies, the linking of infrastructures, the opening up of trade routes, the flow of capital, and the fostering of friendship between peoples should also go hand in hand."). This connectivity is approached asymmetrically in ways that may or may not actually boost economic growth for all concerned, but that clearly *do* tend to increase partners' dependence upon China—just as one would expect under the concept of "dual circulation." See, e.g., HILLMAN, *supra* note 107, at 12 ("Beijing wants to warry, store, and mine more of the world's data while keeping its own networks out of reach.").

¹⁰⁹ See Sam LaGrone, *Pentagon: Chinese Navy to Expand to 400 Ships by 2025, Growth Focused on Surface Combatants*, USNI NEWS, (Nov. 29, 2022), <https://news.usni.org/2022/11/29/pentagon-chinese-navy-to-expand-to-400-ships-by-2025-growth-focused-on-surface-combatants>.

¹¹⁰ See Ford, *supra* note 10, at 3–4.

¹¹¹ See *id.*

¹¹² See *Excerpt: The Third Revolution*, The Council on Foreign Rels. (2018), <https://www.cfr.org/excerpt-third-revolution>.

This brings us to the second way in which the PRC presents threats to the U.S. homeland, which derives from the fundamental way in which *American power, national security, and global influence are felt to stand in the way* of China's achievement of its Sinocentric international dream. At the beginning of the 20th Century, the seminal Chinese nationalist thinker Liang Qichao mused about how the growth of the U.S. Navy might inherently block China from being able to "utilize the Pacific in order to hold sway over the world."¹¹³ Ever since, it has been expressly or impliedly felt that U.S. power stands in the way of China achieving its geopolitical destiny.¹¹⁴

This worldview has potentially dramatic implications. It indicates that, unless China moderates its geopolitical ambition, U.S. power decays and diminishes enough to no longer be such an obstacle, or we voluntarily cede global pride of place to Beijing,¹¹⁵ the CCP's worldview suggests that the PRC may ultimately need to *break the back* of American global power if China is to achieve its dream. Doing that, in turn, will first require the PRC to obtain a position from which it can present great threats to U.S. forces and interests, and ultimately the American homeland itself.

¹¹³ Christopher Ford, *China's Global Ambitions and U.S. Interests*, NEW PARADIGMS FORUM (2015) (quoting Liang Qichao), <https://www.newparadigmsforum.com/p1971>. For more on Liang and his thinking vis-à-vis the United States, see FORD, *supra* note 50, at 104–08.

¹¹⁴ *Id.*

¹¹⁵ It may perhaps have seemed for many years that we were doing this, as U.S. leaders long embraced and facilitated Beijing's rise on the naïve and hubristic assumption that as it became wealthier and more powerful China would moderate its behavior and ultimately evolve into a friendly liberal democracy. See David R. Stilwell, Assistant Sec'y of State for E. Asian and Pac. Affs, Remarks at the Center for Strategic and International Studies (Dec. 13, 2019) (describing decades of U.S. policy efforts to facilitate China's rise, and noting that this enduring generosity was not reciprocated by the PRC). And indeed, as Alex Joske has detailed, enthusiasm for assisting China's rise was encouraged by an extensive campaign of secret information operations carried out by PRC intelligence operatives against—and in order to influence—Western elites and convince them of the benevolence of "China's rise." Joske, *supra* note 105, at 97–112.

To be sure, the CCP desires a peaceful global succession, perhaps akin to the way in which a weary Britain eventually voluntarily handed off the baton of *de facto* systemic leadership to the U.S. in the early 20th Century.¹¹⁶ Beijing clearly hopes that its aforementioned political, economic, and technological “leverage web” of coercive influence can help it achieve such a transition. Yet, in the event that this fails—and since the CCP shows no sign of being willing to moderate its strategic objectives—Beijing is *also* preparing for some kind of possible “Plan B” that involves direct conflict.

III. THE RISK OF WAR

It is in this context that the world seems to be slowly waking up to the threats that PRC revisionism presents. There is still no sign yet, however, that such a collective awakening will persuade the CCP to moderate its ambitions, either by concluding that it does not *need* that kind of coercive dominance, or pushing the CCP back into a posture of prudential strategic caution akin to the one it followed under Deng Xiaoping and his immediate successors.¹¹⁷

The CCP has not moderated its aggressive push to coerce and control others, nor its provocative military build-up. Moreover, with China’s economy having slowed, and with structural demographic challenges mounting¹¹⁸ even as the rest of

¹¹⁶ See AARON L. FRIEDBERG, *WEARY TITAN: BRITAIN AND THE EXPERIENCE OF RELATIVE DECLINE, 1895-1905*, 298–300 (1st ed. 1988).

¹¹⁷ Under them, China was willing to defer its global dreams for some years because China’s power was not then sufficient to support their achievement. See FORD, *supra* note 50, at 134–35, 183, 391–96.

¹¹⁸ See, e.g., Simon Constable, *China’s Share of Global Economy Set to Stall – New Research*, FORBES (Oct. 24, 2022), <https://www.forbes.com/sites/simonconstable/2022/10/24/chinas--share-of-global-economy-set-to-stallnew-research/?sh=680148354131>; Jessie Yeung, *China’s Population is Shrinking. The Impact Will be Felt Around the World*, CNN (Jan. 19, 2023), <https://www.cnn.com/2023/01/18/china/china-population-drop-explainer-intl-hnk/index.html>; *China’s Local Debt Crisis is About to Get Nasty*, THE ECONOMIST (May 4, 2023), <https://www.economist.com/finance-and->

the world awakens and begins to respond to Beijing's imperialistic ambitions—and as the free people of Taiwan internalize the ugly lessons taught by the CCP's crackdown on civil society and residual freedoms in Hong Kong¹¹⁹—it is possible that Party leaders in Beijing might decide that outright conflict is *more* desirable *sooner* than later.

Which brings us back to the question of direct threats to the U.S. homeland. In the context of strategic ambitions of coercive global dominance, direct PRC threats to the U.S. may be especially acute in at least two respects. First, if conflict with the U.S. were to erupt, it seems unlikely that all its aspects would remain confined to the Western Pacific. Indeed, the PLA may feel that if it wishes to fight effectively against U.S. forces in that region, it will need to be able to move decisively against American capabilities farther afield early in a conflict. Specifically, it might feel it needs to employ its growing array of counterspace capabilities¹²⁰ against the space-based infrastructure upon which U.S. power-projection capabilities heavily depend,¹²¹ or perhaps launch cyberattacks against American critical infrastructure to impede U.S. mobilization, defense production, and war

economics/2023/05/04/chinas-local-debt-crisis-is-about-to-get-nasty; Diego A. Cerdeiro & Sonali Jain-Chandra, *China's Economy is Rebounding, But Reforms are Still Needed*, IMF (Feb. 3, 2023), <https://www.imf.org/en/News/Articles/2023/02/02/cf-chinas-economy-is-rebounding-but-reforms-are-still-needed>.

¹¹⁹ CCP repression in Hong Kong is doing much to inoculate Taiwanese against any temptation to accept the Party's "one country, two systems" blandishments. See Fang-Yu Chen, Austin Wang, Charles K S Wu, & Yao-Yuan Yeh, *Hong Kong Repression Pushes Taiwan Away from China*, EAST ASIA FORUM (Jan. 10, 2020), <https://www.eastasiaforum.org/2020/01/10/hong-kong-repression-pushes-taiwan-away-from-china/>.

¹²⁰ See Matthew Mowthorpe & Markos Trichas, *A Review of Chinese Counterspace Activities*, THE SPACE REVIEW (Aug. 1, 2022), <https://www.thespacereview.com/article/4431/1>.

¹²¹ See LTC James T. Edwards Jr., Lt Col Jeffrey A. Katzman, & MAJ Robert P. Farrell, *The Critical Role Space Plays in Enabling C2 (The Ultimate High Ground)*, AIR LAND SEA SPACE APPLICATION CENTER (Mar. 14, 2022), <https://www.alsa.mil/News/Article/2966222/the-critical-role-space-plays-in-enabling-c2-the-ultimate-high-ground/>.

sustainment activity,¹²² a great danger about which U.S. officials are now openly warning.¹²³ Such PLA moves could have direct and dramatic effects upon the U.S. homeland and the American people.

The PRC's revisionist ambitions in the Indo-Pacific¹²⁴ also give rise not just to the danger of Chinese attacks against U.S. military allies or partners, but also to direct threats against the U.S. in a second way. Xi Jinping and his CCP colleagues appear to be starting to follow Vladimir Putin's playbook of building an "offensive nuclear umbrella"¹²⁵ of nuclear weapon capabilities intended to deter the U.S. from intervening to stop a war of PRC aggression against one or more of China's neighbors.¹²⁶

As the Pentagon's 2022 *China Military Power* report¹²⁷ now confirms, the PRC appears to be sprinting toward at least strategic nuclear parity with the U.S.—including through the rapid construction of hundreds of new silos for Intercontinental

¹²² See, e.g., OFF. OF THE DIR. OF NAT'L INTEL., ANNUAL THREAT ASSESSMENT OF THE US INTELLIGENCE COMMUNITY 8 (2022) (warning of "the expansion of technology-driven authoritarianism globally" and noting also that "China almost certainly is capable of launching cyber attacks that would disrupt critical infrastructure services within the United States, including against oil and gas pipelines and rail systems.").

¹²³ See, e.g., Jeff Seldin, *U.S. Warns of Massive Chinese Cyberattacks in Taiwan Scenario*, VOICE OF AMERICA (Feb. 27, 2023), <https://www.voanews.com/a/us-warns-of-massive-chinese-cyberattacks-in-taiwan-scenario-/6981396.html>; Christine Wormuth, *China Will Attack U.S. Soil if Tensions Boil Over: Army Secretary*, NEWSWEEK (Feb 27, 2023), <https://www.msn.com/en-us/news/world/china-will-attack-u-s-soil-if-tensions-boil-over-army-secretary/vi-AA189yoQ?ocid>.

¹²⁴ See Gabriele Natalizia & Lorenzo Termine, *Tracing the Modes of China's Revisionism in the Indo-Pacific: A Comparison with Pre-1941 Shōwa Japan*, 51 ITALIAN POL. SCI. REV. 83, 87 (2021).

¹²⁵ See Christopher Ford, *Offensive Nuclear Umbrellas and the Modern Challenge of Strategic Thinking*, Remarks to the Nuclear Security Working Group (NSWG), Congressional Seminar "Nuclear Security in the 21st Century" (Feb. 10, 2016).

¹²⁶ See *id.*

¹²⁷ See U.S. DEP'T OF DEFENSE, *MILITARY AND SECURITY EVENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* iii-xiv (2022).

Ballistic Missiles (“ICBMs”).¹²⁸ Just as the Biden Administration’s 2022 *Nuclear Posture Review*¹²⁹ notes with respect to Putin’s use of nuclear threats to create a “shield” behind which to wage aggressive war, it would appear Xi Jinping is also preparing his own nuclear “shield” behind which to attack China’s neighbors. He is doing this by vastly expanding the number of strategic nuclear forces targeting the American homeland.

IV. CONTEXTUALIZING SURVEILLANCE: DATA, DISCIPLINE, AND POWER

With Chinese surveillance activities against the U.S. homeland having received much media attention,¹³⁰ it is worth asking how, if at all, such activities fit into the broader context of the CCP’s strategy. One potential answer is that, if the PLA wishes to target U.S. communications systems and critical infrastructure for wartime disruption,¹³¹ it must first acquire data enabling it to characterize and pervasively target such systems. Slow-transit balloon flights at altitudes far lower than those of orbiting satellites are likely a good way to collect such data,¹³² and might usefully complement other PRC surveillance opportunities such

¹²⁸ See Christopher Ford, *Assessing the Biden Administration’s “Big Four” National Security Guidance Documents*, 3 NAT’L INST. FOR PUB. POLICY 23–24 (Jan. 2023).

¹²⁹ See U.S. DEP’T OF DEFENSE, 2020 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES: 2022 NUCLEAR POSTURE REVIEW 1 (2022).

¹³⁰ See Michael A. Allen, Carla Martinez Machain, & Michael E. Flynn, *Spy Balloon Drama Elevates Public Attention, Pressure for the US to Confront China*, BOISE STATE NEWS (Feb. 9, 2023)

<https://www.boisestate.edu/news/2023/02/09/spy-balloon-drama-elevates-public-attention-pressure-for-the-us-to-confront-china/>.

¹³¹ See OFF. OF THE DIR. OF NAT’L INTEL., ANNUAL THREAT ASSESSMENT OF THE US INTELLIGENCE COMMUNITY 8 (2021).

¹³² See, e.g., Courtney Albon, *Why Stratospheric Balloons are Used in an Era of Space-Based Intelligence*, C4ISRNet (Feb. 6, 2023),

<https://www.c4isrnet.com/battlefield-tech/space/2023/02/06/how-stratospheric-balloons-could-complement-space-based-intelligence/>.

as Beijing's use of facilities in Cuba, just 100 miles off the Florida coast.¹³³

Yet it is also worth remembering that those balloon flights do not appear to have exclusively targeted the U.S. and Taiwan, for there have been reports of flights all over the world, transiting at least five continents.¹³⁴ It may be that such surveillance serves broader purposes than merely supporting PLA operational characterization of communications and infrastructure targets as part of wartime contingency planning.

Specifically, such surveillance activities may be part of a broader CCP strategy rooted in the nature and ambitiousness of PRC global objectives. After all, the accumulation and analysis of massive amounts of data is central to the model of authoritarian political control that the CCP has developed in China.¹³⁵ Already, it has been reported,

¹³³ See Natasha Bertrand, *Cuba Gives China Permission to Build Spying Facility on Island, US Intel Says*, CNN (June 9, 2023), <https://www.cnn.com/2023/06/08/politics/cuba-china-spying-facility/index.html>; Alex Marquardt, Jasmine Wright, & Zachary Cohen, *China has been Operating Military and Spy Facilities in Cuba for Years, US Officials Say*, CNN (June 10, 2023), <https://www.cnn.com/2023/06/10/politics/china-military-spy-facilities-cuba-us/index.html> (stating that Chinese security services have also reportedly been conducting electronic and other sorts of surveillance on the United States “for years” – or “at least since 2019” – from facilities located in Cuba); Aamer Madhani, *US Confirms China has Had a Spy Base in Cuba Since at Least 2019*, ASSOCIATED PRESS (June 11, 2023), <https://apnews.com/article/china-cuba-spy-base-us-intelligence-0f655b577ae4141bdbeabc35d628b18f#>.

¹³⁴ See, e.g., Rhea Mogul & Andrew Raine, *Uncontacted Tribes and an Indian Military Base. Did a ‘Spy’ Balloon Snoop on the Andaman and Nicobar Islands?* CNN (Feb. 17, 2023), <https://www.cnn.com/2023/02/17/india/india-china-spy-balloon-andaman-nicobars-intl-hnk/index.html>; Humeyra Pamuk, Yew Lun Tian, & Michael Martina, *U.S. Briefed 40 Nations on China Spy Balloon Incident, Diplomats and Official Say*, REUTERS (Feb. 9, 2023), <https://www.reuters.com/world/us-briefed-40-nations-china-spy-balloon-incident-diplomats-official-say-2023-02-08/>.

¹³⁵ See generally JOSH CHIN & LIZA LIN, *SURVEILLANCE STATE: INSIDE CHINA'S QUEST TO LAUNCH A NEW ERA OF SOCIAL CONTROL* (2022).

China is turning a major part of its internal Internet-data surveillance network outward, mining Western social media, including Facebook and Twitter, to equip its government agencies, military and police with information on foreign targets, according to a Washington Post review of hundreds of Chinese bidding documents, contracts and company filings.¹³⁶

To the extent that the CCP increasingly aims to project aspects of that model overseas, pervasive overseas surveillance will presumably become even more necessary.

To understand this, it is important to appreciate that the leaders of the CCP face a formidable challenge as they try to impose political control on a large and diverse population in the Internet era. The PRC has become remarkably adept at implementing automated censorship of the information space within China, but it still faces limits of speed and scale in the epic “cat-and-mouse” game of real-time CCP Internet censorship at home.¹³⁷

Nor does the CCP’s censorship of speech itself directly result in inducing people to engage in the full range of behaviors the CCP desires. Given the large and complex system represented by any modern society, especially one with a population as large as China’s, it is surely the case that traditional, Soviet-style methods of totalitarian control through pervasive and detailed government direction and command are unlikely to be very effective today.

The CCP seems to understand this challenge. Rather than attempt the Quixotic feat of such direct control, it aims to exert

¹³⁶ Cate Cadell, *China harvests masses of data on Western targets, documents show*, WASH. POST (December 31, 2021), https://www.washingtonpost.com/national-security/china-harvests-masses-of-data-on-western-targets-documents-show/2021/12/31/3981ce9c-538e-11ec-8927-c396fa861a71_story.html.

¹³⁷ See Chin & Lin, *supra* note 135, at 91.

what might be called “effective control” over a large and diverse society—that is, to influence large masses of people into desired patterns of behavior *in the aggregate*, relying as much as possible upon autonomous choices, rather than detailed, individual directions.¹³⁸ To achieve such effective control, however, the CCP needs at least two things: (1) tools of discipline with which to shape societal actors’ incentives by rewarding desirable behaviors and punishing deviant ones; and (2) a system of pervasive surveillance that gives authorities a reasonable likelihood of being able to tell who is conforming and who is not, so that such rewards or punishments can be applied to them as needed.

Used together, these two elements can create a system in which behavior is gradually conditioned toward conformity, thus helping to enable the ruler to exert effective power over everyone. This is a concept that the 18th Century British philosopher Jeremy Bentham observed in discussing his famous “Panopticon”¹³⁹ concept for correctional reform, and which Michel Foucault later elaborated into an overarching theory of political and societal control in *Discipline and Punish*.¹⁴⁰ Through such means, individuals are incentivized to conform to expectations even if the guards aren’t *actually* paying attention. It is enough that the guards *might* be watching, and that the penalty for being caught is high enough to elicit self-protective prudence.¹⁴¹

¹³⁸ Cf. Ford, *supra* note 12, at 5–7 (discussing impossibility of direct control of large complex systems such as a human society).

¹³⁹ See generally JEREMY BENTHAM, *Panopticon; or, The Inspection-House: Containing the Idea of a New Principle of Construction Applicable to Any Sort of Establishment, in which Persons of Any Description are to be Kept Under Inspection; and in Particular to Penitentiary-Houses* (1787), in *THE WORKS OF JEREMY BENTHAM* 29–95 (Miran Bozovic, ed., 1995).

¹⁴⁰ See generally MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 200–04 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

¹⁴¹ See Bentham, *supra* note 139, at Letter V (“The essence of it consists, then, in the centrality of the inspector’s situation, combined with the well-known and most effectual contrivances for seeing without being seen. . . . You will please to

This is, therefore, a systematic effort at shaping incentives, in ways arguably more effective than “old school” methods of pervasive direct command. Such an incentives-based system of trained conformity does not attempt to deny or substitute for individual human agency, but instead seeks to *coopt* such agency. To the extent that this works, these methods are far more scalable to complex societies and large populations than direct control. This represents, if you will, “new school” authoritarianism.

Indeed, the CCP has been working to build tools of discipline and surveillance for itself, both at home and abroad,¹⁴² as well as working to ensure that *others* obtain as little data about Chinese society as possible.¹⁴³ Whether it is applied systematically and pervasively against the CCP’s subjects within China, or more gradually against people in the rest of the world, the “leverage web” of economic and technological dependencies created by the PRC’s economic rise and aggressive industrial policies—increasingly backstopped, *in extremis*, by the “hard power” of its security services and/or the PLA—helps form the mechanism by

observe, that though perhaps it is the most important point, that the persons to be inspected should always feel themselves as if under inspection, at least as standing a great chance of being so. . . . What is also of importance is, that for the greatest proportion of time possible, each man should actually be under inspection . . . [so that] the greater chance there is, of a given person’s being at a given time actually under inspection, the more strong will be the persuasion - the more intense, if I may say so, the feeling, he has of his being so.”)

¹⁴² See Paul Mozur, Jonah M. Kessel, & Melissa Chan, *Made in China, Exported to the World: The Surveillance State*, N.Y. TIMES (Apr. 24, 2019), <https://www.nytimes.com/2019/04/24/technology/ecuador-surveillance-cameras-police-government.html>.

¹⁴³ See, e.g., Christian Shepherd, *China Raids Another Global Business Consultancy, Cites Spying Concerns*, WASH. POST (May 9, 2023), <https://www.washingtonpost.com/world/2023/05/09/china-raid-capvision-bain-business/> (stating that in 2023, the PRC stepped up its crackdown on foreign companies operating in China, allegedly on “espionage” grounds, focusing especially on consultancy firms and research companies); *China’s Data-Security Laws Rattle Western Business Executives*, THE ECONOMIST (May 4, 2023), <https://www.economist.com/business/2023/05/04/chinas-data-security-laws-rattle-western-business-executives> (asserting that Chinese firms that sell information about the Chinese economy and companies are also “being forced by their domestic overseers to curtail their operations abroad”).

which discipline is administered. The web of potential coercive power provides the muscle needed to enforce “harmonious” conformity with the CCP’s preferences.

But for this model to work, it is also essential to be able to *monitor behavior* on a systemic scale, and that is where surveillance comes in. That is why the CCP’s theory of control depends upon the massive and systematic collection and analysis of data.¹⁴⁴

The dependence of the CCP’s power in China upon society-wide data collection, at least, is well known.¹⁴⁵ The epitome of this is the so-called “social credit score” concept, whereby—in theory—citizens’ behavior is monitored and recorded pervasively enough that their everyday socioeconomic privileges and opportunities can be adjusted on an ongoing basis depending upon how closely they conform to CCP expectations. If an individual engages in anything that the CCP deems to be disharmoniously “antisocial,” for instance, he or she might start to have problems getting high-speed internet connections to work well, obtaining a loan, getting permission to travel, or even using public transportation or accessing social services.¹⁴⁶ The point is not to administer punishment to the offender *per se*. It is to *train* disharmonious citizens, and all those around them. As the Chinese saying goes—or *apropos* Voltaire’s comment about

¹⁴⁴ See generally Chin & Lin, *supra* note 135, at 114–27 (describing data collection and analysis efforts for social control in Xinjiang).

¹⁴⁵ See *id.* at 1–66, 215–31.

¹⁴⁶ See generally Katie Canales & Aaron Mok, *China’s ‘Social Credit’ System Ranks Citizens and Punishes Them with Throttled Internet Speeds and Flight Bans if the Communist Party Deems Them Untrustworthy*, BUSINESS INSIDER (Nov. 28, 2022), <https://www.businessinsider.com/china-social-credit-system-punishments-and-rewards-explained-2018-4>.

Admiral Byng¹⁴⁷—one sometimes needs to kill a chicken to frighten the monkey.¹⁴⁸

Thus, domestically, the CCP's tools of discipline and its massive surveillance architecture work to create social incentive structures encouraging ordinary people always to be *policing themselves* with an eye to what they understand the CCP would want. Such generalized societal self-policing is more efficient, and more scalable, than “old school” methods of direct totalitarian direction and control.

It is well understood that such concepts underlie how the CCP runs China, or at least how it tries to do so. What is less understood, however, is the degree to which the totalitarian control mechanisms of modern China are *explicitly* based upon complex systems thinking. This point is drawn out quite effectively, however, in the work of *Wall Street Journal* reporters Josh Chin and Liza Lin.¹⁴⁹

As Chin and Lin recount, a Chinese scientist by the name of Qian Xuesen—who had worked for years in the U.S. before returning to China and is also, interestingly, remembered as the father of that country's ballistic missile program—was powerfully influenced by Western scholarship in cybernetics. Qian, along with colleague Song Jian, developed, in the 1980s and early 1990s, a concept of “social cybernetics” through which (they claimed) it

¹⁴⁷ See *On the Case of Admiral Byng*, 3 Letters, Letters from Voltaire, <https://www.whitman.edu/VSA/letters/12.1756.html> (explaining that after a British fleet under Admiral John Byng retreated from the defense of Minorca in 1756, leading to Byng's court martial and execution, the French *philosophe* Voltaire wrote in a letter to Count Richelieu that in England it was felt necessary “to put an admiral to death now and then, *pour encourager les autres*” (to encourage the others)).

¹⁴⁸ See George Calhoun, *Kill Chicken Scare Monkey (殺雞儆猴) – Beijing's Philosophy of Regulation Won't Work*, FORBES (Feb. 22, 2021), <https://www.forbes.com/sites/georgecalhoun/2021/02/22/kill-chicken-scare-monkey---beijings-philosophy-of-regulation-wont-work/?sh=57d1dbe6125f>.

¹⁴⁹ See Chin & Lin, *supra* note 135.

would be possible to solve problems in the “open complex giant system” of China’s socialist society.¹⁵⁰ Based upon such thinking, the CCP has built a data-driven approach to “social management” that attempts to apply “a sophisticated mix of carrots and sticks” that political scientist Samantha Hoffman terms a strategy of “co-optation and coercion.”¹⁵¹

According to Chin and Lin, this has been the conceptual point of origin for the CCP’s range of repressive surveillance-and-control measures against Muslims in Xinjiang and elsewhere, in a “radical experiment to reinvent social control through technology” and thereby create “a perfectly engineered society.”¹⁵² As Chinese officials themselves describe it, this program aims to “improve [their] ability to sense, predict[,]and prevent risks”¹⁵³ by “mak[ing] policy based on predictions” from large-scale data collection and modeling.¹⁵⁴ This is intended to be a “comprehensive systems engineering project” that will ensure social stability and political control by “standardizing people’s behavior and liberating them in order to establish a beneficial order.”¹⁵⁵

One might quarrel with the hubris implied by the predictive ambitions of this CCP approach, since one characteristic of a complex adaptive system is that its behavior is extraordinarily hard, if not impossible, to predict. Moreover, one generally *cannot* reliably produce outcomes through exogenous interventions in such a system.¹⁵⁶ But even if it does not prove possible for Chinese authorities to predict the dissidents and malcontents of tomorrow, their approach of combining pervasive surveillance with powerfully coercive instruments of control to shape the incentive structures of societal actors may be a

¹⁵⁰ See *id.* at 74–81.

¹⁵¹ *Id.* at 95–96.

¹⁵² *Id.* at 6–7.

¹⁵³ *Id.* at 93 (quoting Xi Jinping).

¹⁵⁴ *Id.* at 94 (quoting Professor Meng Tianguang of Tsinghua University).

¹⁵⁵ *Id.* at 59 (quoting CCP official Hu Lianhe).

¹⁵⁶ See Ford, *supra* note 12, at 5–6.

powerful model. There is some Western scholarship that would seem to support the idea of “nudging” society in desired directions through various incentives-based approaches,¹⁵⁷ and the CCP’s innovation may be to take such concepts to an extraordinary new level. While far from perfect in its grim efficacy,¹⁵⁸ this CCP model might be the best available option for would-be dictators everywhere.¹⁵⁹

What is appreciated *even less* than the role of such “complex systems”-derived thinking in China’s ugly system of domestic political control is the degree to which the CCP has been trying to *expand* this concept—by degrees—to the rest of the world. Every time a Western company¹⁶⁰ or celebrity¹⁶¹ faces PRC economic and commercial chastisement and is told to make a groveling apology for having “hurt the feelings of the Chinese people”¹⁶² by saying something the CCP dislikes, the CCP is trying

¹⁵⁷ See, e.g., RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* 99–102 (2d ed. 2021) ; DAVID COLANDER & ROLAND KUPERS, *COMPLEXITY AND THE ART OF PUBLIC POLICY: SOLVING SOCIETY’S PROBLEMS FROM THE BOTTOM UP* 166–68 (2014).

¹⁵⁸ Lin and Chin, for instance, see the CCP’s “social credit system” as being still quite flawed, and that its proponents in China have been exaggerating its effectiveness. Nevertheless, they also note that such defects do not necessarily preclude it being useful in augmenting the Party’s authoritarian control. As a propaganda effort, they write, it “had fakery built in as a feature. The prisoners [in Bentham’s Panopticon] only had to *believe* that they were being watched.” Chin & Lin, *supra* note 135, at 218 (emphasis added).

¹⁵⁹ See, e.g., Thaler & Sunstein, *supra* note 157, at 99–102; Colander & Kupers, *supra* note 157, at 166–68.

¹⁶⁰ See Shunsuke Tabet, *Beijing Slams 7-Eleven for Labeling Taiwan a Country on Website*, NIKKEI ASIA (Jan. 7, 2022) <https://asia.nikkei.com/Business/Retail/Beijing-slams-7-Eleven-for-labeling-Taiwan-a-country-on-website>.

¹⁶¹ See Daniel Victor, *John Cena Apologizes to China for Calling Taiwan a Country*, N.Y. TIMES (May 25, 2021), <https://www.nytimes.com/2021/05/25/world/asia/john-cena-taiwan-apology.html>.

¹⁶² The declaration that one has “hurt the feelings of the Chinese people” (伤害了中国人民的感情) – with its connotations that one has behaved

to establish and reinforce habits of conformity. Every time a Western scholar is blacklisted and barred from doing work in China for inconvenient facts identified by his or her scholarship,¹⁶³ the CCP is trying to train other scholars to be less impertinent. Every time a Western film studio faces exclusion from Chinese markets if China or the CCP is portrayed less than favorably in a screenplay,¹⁶⁴ the Party is laying down a marker about how we must all describe China in the future.¹⁶⁵ And every time a country faces PRC economic warfare for rejecting Beijing's political demands,¹⁶⁶ it is pressured by China to change how it teaches history to its own schoolchildren,¹⁶⁷ or it is punished for showing

inappropriately and must therefore rectify such offensive behavior – is today an all-purpose accusation describing essentially anything the CCP dislikes others having said, but it dates back several decades. Amy King, *Hurting the Feelings of the Chinese People*, HIST. AND PUB. POL'Y PROGRAM, WILSON CENTER (Feb. 15, 2017), <https://www.wilsoncenter.org/blog-post/hurting-the-feelings-the-chinese-people>.

¹⁶³ See, e.g., James A. Millward, *Being Blacklisted by China, and What can be Learned from it*, MEDIUM (Dec. 28, 2017), <https://jimmillward.medium.com/being-blacklisted-by-china-and-what-can-be-learned-from-it-faf05eb8e1e2>.

¹⁶⁴ See, e.g., Taylor Shortal, *Hollywood's Red Dawn: China's Restrictions on American Film*, 2 BUS. ENTREPRENEURSHIP & TAX L. REV. 208, 208–209 (2018).

¹⁶⁵ Chinese efforts to intimidate Hollywood into portraying the world as China wishes it to be seen have sometimes provoked a backlash from others. Vietnam, for instance, has banned at least three U.S. films for seeming to endorse China's claims to the entirety of the South China Sea. See Reuters, *Vietnam Bans 'Barbie' Movie over South China Sea Map*, CNN (July 3, 2023), <https://www.cnn.com/2023/07/03/entertainment/vietnam-bans-barbie-movie-intl-scli/index.html>.

¹⁶⁶ See Daniel Hurst, *China's Infamous List of Grievances with Australia 'Should be Longer than 14 Points,' Top Diplomat Says*, THE GUARDIAN (Nov. 19, 2021), <https://www.theguardian.com/australia-news/2021/nov/20/chinas-infamous-list-of-grievances-with-australia-should-be-longer-than-14-points-top-diplomat-says>.

¹⁶⁷ *China Lodges Protest with Japan Over New Textbooks*, REUTERS (Mar. 22, 2016), <https://www.reuters.com/article/us-china-japan-education/china-lodges-protest-with-japan-over-new-text-books-idUSKCN0W00RP>.

some degree of solicitude to Taiwan,¹⁶⁸ the CCP is working to establish and reinforce global docility.

Such external manifestations of this model of control are, of course, much different in *degree* than the sort of intensive, totalizing measures which the CCP tries to implement within China. But such outward-facing efforts are not really that different *in kind*—and Beijing is doing what it can to expand their reach.

This points us to another way in which the PRC's worldwide surveillance campaigns fit into the CCP's broader strategy, for no Benthamite/Foucauldian "Panopticon" can function without a pervasive ability to collect and retain information about those whose behavior it aims to control. One needs to *monitor* the rest of the world in order to be in a position to *enforce* behavioral strictures there.

The Chinese Communist Party's approach to controlling the behavior of others in service of its dream of building a Sinocentric global order draws upon a worldwide surveillance campaign that has many facets. It certainly involves global cyber intrusions on a huge scale.¹⁶⁹ It also draws upon the massive data flows to which CCP leaders can acquire access when PRC technology firms such as Huawei and ZTE run telecommunications networks, "smart ports" and "smart cities," undersea cables, cloud service systems, and other infrastructure in various countries.¹⁷⁰ Consumers worldwide probably also have

¹⁶⁸ See Lawrence Chung, *Lithuania Defies Beijing's Anger and Names New Envoy to Taiwan*, SOUTH CHINA MORNING POST (Aug. 18, 2022), <https://www.scmp.com/news/china/diplomacy/article/3189386/lithuania-defies-beijings-anger-and-names-new-envoy-taiwan>.

¹⁶⁹ See Patrick Howell O'Neil, *How China Built a One-of-a-Kind Cyber Behemoth at Last*, MIT TECH. REV. (Feb. 28, 2022), <https://www.technologyreview.com/2022/02/28/1046575/how-china-built-a-one-of-a-kind-cyber-espionage-behemoth-to-last/>.

¹⁷⁰ See Christopher Ford, Assistant Sec'y of State, *Huawei and its Siblings, the Chinese Tech Giants: National Security and Foreign Policy Implications*, Remarks at the Multilateral Action on Sensitive Technologies (MAST)

reason to be concerned about the security and privacy implications of the Chinese technology going into new generations of “Internet of Things” devices that function as *de facto* information collectors about every aspect of our day-to-day lives, as well as about web-based services, social media platforms, and cloud services operations run by Chinese technology companies. Under PRC law and longstanding CCP practice, there is nothing reliably “private” about any data gathered in this fashion, and if it is technically possible for the CCP to access and analyze such data in its planning and strategy, and the CCP thinks it important to do so, such access is highly likely to occur.¹⁷¹ And it now appears that the CCP’s data-centric global strategy also includes data collected from globe-spanning surveillance balloon flights.

Conference, U.S. Department of State (Sept. 11, 2019). The amounts China has spent on establishing information technology projects such data centers in foreign countries – often linked back to China via PRC-build undersea cables, and sometimes also involving the installation of networks of urban surveillance cameras – have reportedly expanded sixfold since 2013. See Ryohei Yasoshima & Anna Nishino, *China’s Belt and Road Pivots from Coal Plants to Data Centers*, NIKKEI ASIA (May 6, 2023), <https://asia.nikkei.com/Spotlight/Belt-and-Road/China-s-Belt-and-Road-pivots-from-coal-plants-to-data-centers>. In a similar vein, it was reported in 2022 that U.S. officials were “investigating Chinese telecoms equipment maker Huawei over concerns that U.S. cell towers fitted with its gear could capture sensitive information from military bases and missile silos that the company could then transmit to China.” Alexandra Alper, *Exclusive: U.S. Probes China’s Huawei over Equipment Near Missile Silos*, REUTERS (July 21, 2022), <https://www.reuters.com/world/us/exclusive-us-probes-chinas-huawei-over-equipment-near-missile-silos-2022-07-21/>.

¹⁷¹ The same is true, in effect, about technologies transferred to anyone within reach of PRC jurisdiction or coercion. See Christopher Ford, Assistant Sec’y of State, Chinese Technology Transfer Challenges to U.S. Export Control Policy, Remarks to the Project on Nuclear Issues (PONI) at the Center for Strategic and International Studies (CSIS) (July 11, 2018) (“If any given technology is in any way accessible to China, in other words, and officials there believe it can be of any use to the country’s military and national security complex as Beijing prepares itself to challenge the United States for global leadership, one can be quite sure that the technology *will* be made available for those purposes – pretty much no matter what.”).

CONCLUSION

There is a vast literature on the nature and scope of the PRC's various forms of engagement with the outside world, from cyber espionage projects to diplomatic initiatives, and from infrastructure projects to spy balloon flights. There is also, as noted earlier, at least some literature on China's broad strategic objectives.¹⁷² This paper has hopefully helped tie these two literatures more usefully together, by explaining some of the conceptual connective tissue that ties specific PRC behaviors back to the CCP's grand strategy.

To conclude, it is vital to understand that even though Western leaders still tend to approach China policy on a piecemeal, "whack-a-mole" basis, the CCP's strategy for gradually crafting a post-Westphalian international order centered around China is in no way disaggregated or haphazard. Instead, that strategy is notably holistic, and is grounded in what is in many ways a highly coherent and systematic approach to political control, both within China and abroad. This is an approach with at least a plausible theoretical foundation, and that has an ability to scale in ways that might be needed to achieve the CCP's ambitions.

None of this, of course, is to argue that the CCP will necessarily *succeed* in achieving the ambitious global goals it has set for itself. It may well fail, and China's strategy could easily collapse for any of a great many reasons. It is important, however, for Western leaders to understand the nature of the Party's ambitions and the broad means by which it hopes to accomplish its objectives. It is also important for them to understand the specific ways in which the CCP's vision challenges today's

¹⁷² To the sources cited in this regard in notes 10–11, the reader should add, at the least: HOWARD W. FRENCH, *EVERYTHING UNDER THE HEAVENS: HOW THE PAST HELPS SHAPE CHINA'S PUSH FOR GLOBAL POWER* 3–12 & 265–84 (2017); Jonathan T. Ward, *CHINA'S THEORY OF VICTORY* 1–44 (2019); HAL BRANDS & MICHAEL BECKLEY, *DANGER ZONE: THE COMING CONFLICT WITH CHINA* 1–24 (2022); Doshi, *supra* note 60, at 1–44; FORD, *supra* note 50, at 441–74; and Ford, *supra* note 15, at 249–82.

Westphalian “rules-based international order” if those leaders are to devise effective policies in response.

