1. Introduction

The minority peoples of the People’s Republic of China are made up of 55 different “nationalities” and constitute 6% of the total population. In most countries they would be considered statistically insignificant. But in China, 6% of the population represents 67 million people occupying over half the land area of China; they inhabit, e.g., the vast areas of Tibet, Xinjiang, Qinghai, Gansu, Ninxia and Inner Mongolia.1 The foremost reason why the Chinese government considers the minority peoples of great importance is, however, strategic.

The areas of Xinjiang and Tibet have given the PRC a dominant position in Central Asia and access to the entire Indian subcontinent.2 Most minority groups live along the land frontiers of China and in many cases the borders divide the minority groups between two or more states. Should they be hostile to the Beijing government, such minorities could weaken the Chinese defense posture. Moreover, a large part of the border is still the subject of constant disputes: for example, the Sino-Soviet, the Sino-Vietnamese, and the Sino-Indian border, the latter being currently subject to renewed tension.3

At the present time the propaganda factor has assumed some importance. Since an aspect of the PRC’s new foreign policy is the decrease in international tensions while the economy, with foreign support and currency, is growing, a prosperous, contented minority population would attract foreign tourists and

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1. Other minorities live in Yunnan, Guizhou, Guangdong, and Sichuan.
2. China is reported to be stockpiling nuclear arms in Tibet, including ICBMs; the cities of Moscow and New Delhi are now within China’s reach. See, e.g., Indian Express 10 March 1987.
become a living proof of the benefits the current Chinese policy can have for the Chinese population of Hong Kong and Taiwan and the non-Han people. On the other hand, a rebellious minority group can only lend credence to the doubts of the foreign powers regarding Chinese policy, and would discourage foreign investment and tourism.

In this respect, the legacy of China’s takeover of Tibet in 1950 (in the words of the Chinese: “Peaceful liberation”; of the Tibetans: “occupation”) is largely negative. In the fall of 1987, anti-Chinese resentment culminated in three pro-independence demonstrations of up to 2,000 Tibetans in Lhasa, in which at least fourteen people were killed. The riots followed a visit to the United States of the exiled Tibetan leader, the Dalai Lama, who leads a strong opposition abroad that continues to threaten the legitimization of Chinese rule in Tibet, and who is in the West increasingly respected as “a man of peace”. The violent incidents and the worldwide attention they attracted — Chinese policy in Tibet was e.g., strongly condemned by the U.S. Congress — caused considerable embarrassment on the Chinese side.

Furthermore, the border area between India and China not only ties up large reserves of men and capital, but also has the potential of a new conflagration. Since April 1987 sizeable reinforcing of troops has taken place along the Himalayan border, and some sources even reported a clash. From Beijing’s point of view, the Dalai Lama and Tibetan refugees in India remain a dangerous weapon in the hands of New Delhi and other foreign powers, although India did not use the recent events in Tibet to its own advantage but instead accepted the Chinese request that the Dalai Lama be warned against excessive political activity.

Also, China’s plans to exploit the vast mineral reserves of the minority areas confront PRC’s leadership with a dilemma, since the government cannot count on broad popular support. Nor is a leader, acceptable to the Tibetans,
available. Tibetans, such as the Panchen Lama — who spent fifteen years in a Chinese labor camp — and Ngabo Ngawang Jigme are regarded by the Chinese as still unsuitable for a governing role. Although the government is strongly encouraging the transfer of Chinese into minority areas, the establishment of large Han-settlements in these areas is financially out of the question and many Han-immigrants suffer from physical discomforts as well as psychological problems, due to the climate, altitude and remoteness of such regions as Tibet.

Finally, the question of Tibet seems to have a relevance also for the Chinese policy towards Taiwan. Deng Xiao Ping recognized that Taiwan could not be subdued by force. Tibetan refugees speculated that Beijing's recent overtures to them were part of its attempts to convince Taiwan that reunification is possible. A Chinese editorial in Red Flag stresses: "In addition to bringing Taiwan back into the Motherland, we must do a good job of winning over the Dalai clique and the overseas Tibetan compatriots." The recent unrest in Tibet, however, has prompted the Taiwanese government to offer military and other assistance to Tibetans fighting communist rule in Tibet.

In the long run, the minorities, the Tibetans in particular, present more of a problem than that of merely governing 67 million inhabitants. The nature of China's past policy towards the minorities has been the subject of much controversy among Western scholars. George Mosely believes that the "regional autonomy" is the opposite of what its name implies: "regional detention" would be more descriptive. Others, like June T. Dreyer, regard the "minority problem" as essentially a problem of integration and assimilation.

In any case, most of the minorities do not seem to have agreed with the policy forced upon them. The Chinese government has depicted the minorities as happily smiling "liberated" people, of whom only a few Tibetans are so "backward (that) they want to return to slavery" and who are backed by "foreign antagonistic forces". Some minority groups may have benefitted from

11. International Herald Tribune, 9 Oct. 1987; China Post (Taipei), 22 Oct. 1987. Taiwan's premier Yu Kuo Hwa said: "We should guide their heroic move to join with all our compatriots in destroying the communist tyrants". Taiwan's leadership also remembers that Beijing in 1951 promised the Tibetans not to alter the existing political system in Tibet and to guarantee "autonomy". The promises are alarmingly similar to Beijing's current overtures to Taiwan.
14. See, e.g., the observations of foreign correspondents present during "celebrations" of the
Chinese policies (such as the removal of the Muslim practice of preventing girls from attending school), but both inside and outside China opposition remains strong. In the minorities' refugee press and in foreign media accounts there are repeated reports of local resistance to Chinese rule, not only in Tibet — where the recent violence was only the latest of several uprisings since 1959, the year the Dalai Lama fled the country — but also in Xinjiang. In 1985 the minority people's refugees joined forces to "create awareness for their just struggle" by establishing the "Allied Committee of the Peoples' of Eastern Turkestan, Mongolia, Manchuria and Tibet".13

After 1980 there was a change in the PRC's policy towards the minorities. Within the PRC a more moderate and relaxed policy seems to have been implemented: failures of the past policy are now openly admitted and an increased concern has been expressed for minorities' tradition, customs and beliefs. In most areas a significant upturn in economic and religious activity is apparent. To the Tibetans in exile, after more than 25 years, Beijing attempted its only untried course: it established a dialogue with the Dalai Lama in India.16 With his return perhaps the Tibetans could be neutralized and Tibet could finally begin to exploit its vast resources.

In the same period, the Chinese government has promoted, in conjunction with large-scale economic reforms, a "strengthening of the legal system" and of "government by law".17 The number of laws enacted in these recent years is many times greater than during the entire period 1949-1978. Some of these laws grant "autonomous regions", where most minorities live, more legislative and political power, and contain an increased number of clauses concerning "human rights", some of which are important for the minority people. Yet in Tibet's recent unrest, demonstrators explicitly criticized the PRC leadership for systematically violating the rights of Tibetans. In this article I shall therefore discuss questions as to what extent the current revival of the law affects the position of the minorities within the PRC, and what is the relationship between the new legislation and the recent minority policy. A closer look, from the point of view of their position in the PRC's legal system, at the peoples living in China's sensitive border regions, may not only clarify the tense relations between China and its minorities, but may also contribute to a better understanding of China's complex relations with its neighbors.

During the research for this essay, I faced the problem of the lack of many


17. This policy was introduced in "China's Socialist Legal System", BR 12 Jan. 1979, 25.
useful sources. Although from Chinese sources the official attitude is quite clear, from refugee reports and foreign accounts a rather different picture emerges. In practice the situation seems sometimes almost the opposite of how the official Chinese press describes it. The study of law, in particular, reveals the gap between official documents, on the one hand, and Chinese social reality, on the other. Moreover, apart from rather piecemeal materials on Tibet, little is available on most of the other minority groups who are all living in remote parts of the country. Field-research seems the only successful way to obtain reliable data. The remarkably large amount of attention given in the Chinese press to Tibet in the last few years and the recent events in Lhasa, seem justification enough to focus here on Tibet in particular. To some extent, it might be an example of the Chinese minority policy in general.

I shall first concentrate on the theory and practice of law and policy as regards the minorities up to recent times. Then, I shall concentrate on legal areas that are of particular importance to the status of minorities. This part shall be further subdivided into a brief discussion of the Constitution and the concept of “minority nationality”, a discussion of the law as far as it concerns minorities as groups, such as the concepts of “autonomy” and “democracy”. I shall then deal with individual minority rights, the right of freedom of religion in particular as that may serve as a good example of China’s minority policy. Finally, I will mention some other legal developments in minority areas.

2. The History of the Present Chinese Policy and Legal Concepts Applied in Dealing with Minorities

2.1 The Pre-Revolutionary Period

The international relations of the Chinese Emperors, including the relations with Tibet, Turkestan and the Mongols, must be understood in the context of the Chinese tributary system, which was developed from the tradition of cultural superiority over all “barbarians”, who were synonymous with “non-Chinese”. As a consequence of this system, the goal of Ch’ing and other dynasties towards their neighbors was little more than control. To refrain from aggression and a vague commitment of loyalty to the emperor were sufficient.

As is explained in June T. Dreyer’s China’s Forty Millions, which examines China’s minority policy up to the late 1960s, the leaders of the Republic who


succeeded the Ch'ing dynasty used Western ideas for the foundation of the new Chinese "Republic of the Five Nationalities", to which, as the name indicates, not only Han-Chinese were supposed to belong. As Sun Yat-Sen had explained: "We must facilitate the dying out of all the names of individual peoples inhabiting China, i.e., the Manchus, Tibetans, Mongols, and Tatars, we must satisfy the demands of all races and unite them in a single cultural and political whole." But after he had come under Soviet influence, he said: "The government should help and guide the weak and small racial groups within its national boundaries towards self-determination and self-government." This ambiguous attitude, as will be seen below, has been a feature of the official central policy up to the present day.

Sun Yat-Sen's successor, Chiang Kai Shek, continued the policy of unity. The K.M.T. substituted its own white sun banner for the national flag of five equal stripes, representing the five peoples. But in practice, the stated policy of assimilation was a failure. Only the claims to the Ch'ing boundaries were kept intact.

The Chinese Communist Party (CCP) realized in its early days the importance of remaining on good terms with the minority peoples. In 1922, only one year after the foundation of the CCP, the second national Congress proposed that Han, Mongol, Tibetan and Turkic peoples of China should inhabit a federation of separate republics along the lines already laid down by Lenin in the Soviet Union. These, in turn, were based on Marx's ideas about nationality.

According to Marx, national consciousness is merely a manifestation of the bourgeois state of society. Nationality enables the bourgeoisie to remain in power. The supremacy of the proletariat will guarantee the extinction of all national differences. Since he believed that "national consciousness" is a manifestation of economic ties, Marx came to the conclusion that minorities ought to be, and actually felt themselves to be, part of the nation whose economy they shared. Economic ties, not differences in language, customs, religion or history, determined citizenship in a large nation. Marx was later moved to declare "right to self-determination", but this has been interpreted in different ways. It clearly did not form a central idea.

In 1916, Lenin made clear that he interpreted self-determination as the right to political independence: "The right of nations to self-determination implies

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20. Id. 16.
21. Id. 16.
23. Dreyer, (op. cit. note 13), 41.
24. Id. 43.
exclusively the right to independence in the political sense, the right to free political separation from the oppressor nation.'\textsuperscript{23} Like Marx, Lenin expected that the minorities' perception of economic self-interest would lead them to decide voluntarily against independence. But Lenin denied that all nationality problems would be ended by revolution: "The proletariat creates the possibility of abolishing national oppression; the possibility becomes reality only with the establishment of full democracy, including the delineation of state frontiers in accordance with the sympathies of the population."\textsuperscript{26}

As we know, in practice the Soviet policy had rather different results. There is no evidence of the disappearance of national consciousness.\textsuperscript{27} Therefore, as a guideline for minority policy, Marxist-Leninist doctrine presented the Chinese with considerable vagueness and ambiguity. As a consequence, as Dreyer puts it, "the Chinese could formulate minority policy in a wide variety of ways and still remain ideologically orthodox".\textsuperscript{28}

And so the CCP did. From 1922 onwards there were roughly two lines or camps with respect to how to implement the policy: the "right" or "moderate" line, advocating an evolutionary approach, led by Lin-Shaoqi and Deng-Xiaoping, and the "left" or "radical" line, demanding quantum leaps forward, led by Mao Zedong.\textsuperscript{29} For the 55 minority groups, the result, as will be shown, was correspondingly mild or harsh depending on who was in power.

The so-called Jiangxi Constitution of 1930, the first communist Basic Law, closely modelled on that of the USSR, called for "equality of nationalities, freedom of religion and recognition of the right of self-determination, the right of secession and formulation of an independent state for each minority".\textsuperscript{30}

Yet Mao Zedong was aware of the difficult situation the Chinese faced in most of the minority areas. When the communists had passed through Eastern Tibet, during the Long March in 1935, they had met with fierce hostility from Tibetans, Muslims and Mongols.\textsuperscript{31} In Xinjiang, which was formerly called Eastern Turkestan, in 1930 a Muslim revolt had taken place, which had spread into neighboring countries and was only suppressed after brutal repri-

\textsuperscript{25} Id. 46.
\textsuperscript{26} Id.
\textsuperscript{27} A recent illustration may be the riots in Alma Ata, Kazakhstan, in late 1986. \textit{FEER} 1 Jan 1987, 14.
\textsuperscript{28} Dreyer, \textit{op.cit.} note 13, 60.
\textsuperscript{29} John F. Avedon, \textit{In Exile from the Land of Snows}, London 1985, 277.
\textsuperscript{31} P. Wangyal, \textit{op.cit.} note 22, 16.
sals by the Chinese army. The Muslims have resented Chinese rule ever since Xinjiang’s incorporation as a Chinese province in 1873. In 1940, only 6% of the population were Chinese. The Mongolians in Outer-Mongolia had meanwhile established the People’s Republic of Mongolia and — with the Soviet Union’s aid — managed to stay independent. The Tibetans, too, considered themselves to be fully independent of China — which they were, in fact, since 1911 — and, aware of the communist threat, expelled the Chinese mission from Lhasa, protested against the military gathering of Chinese armies on the borders, and appealed (in vain) to the British, American, and Indian governments for support.

Mosely reminds us: “In contrast to the Russian revolution in which peoples other than Great Russians played a role, the revolution in China was a purely Han-Chinese affair.” In 1934 in Juichin, Mao himself declared the objective of his policy to be “the capture of all the oppressed minorities around the Chinese soviet as a means to increase the strength of the revolution against imperialism and the K.M.T.”

It is therefore not surprising that despite the attractive-sounding policy as set forth in the Jiangxi program, the way the minorities were brought under communist control was simply one of military force. In the words of Dreyer: “It was a case of clear-cut military victories, leaving the minority leaders isolated with no choice other than negotiations.” On the eastern border of Tibet a brief but bloody war was fought, as many refugee reports show. The Tibetans accused the Chinese of aggression and violation of Tibet’s territorial integrity and their — at least de facto — independence. As the Dalai Lama said: “There is nowhere an historical record that states that Tibet has at any time been part of China, and the Tibetan people have never agreed to become part of China.” According to recent findings of Western scholars, the legitimacy of the Chinese invasion and occupation of Tibet is highly questionable indeed. And the anti-Chinese riots last year indicate that among Tibetans, in spite of 37 years of Chinese rule, the dream of independence is still very much alive.

33. See H.E. Richardson, Tibet and its History, Oxford 1962; Tenzin Gyatso (the 14th Dalai Lama), My Land and My People 1962.
34. G. Mosely, quoted in Wangyal, op.cit. note 22, 16.
37. See generally Avedon (op.cit. note 29) and Wangyal (op.cit. note 22).
39. M.C. van Walt van Praag, in The Status of Tibet: History, Rights and Prospects in International Law, Boulder/London 1987, concludes that under international law Tibet was and still is an independent state, and, consequently, the Chinese occupation of Tibet is a continuing violation of international law.
2.2 The Post-Revolutionary Period

After 1950, when the minorities were for all practical purposes under Chinese control, it remained for the Party, as Dreyer puts it, “to implement its policy in a manner that would win the loyalties of their intended constituency — or, as Mao Zedong might have phrased it, to reconcile theory with practice”.40 Mao conceived the problems arising from the minorities as part of the complete liberation of the Chinese. For, as he said, “the nationality struggle is in reality a question of class struggle”.41

The right of national self-determination was replaced by a concept of local self-administration within a unified state.42 Self-determination, since then, has been understood to mean secession primarily in a colonial and imperialist context. In the PRC, the Chinese jurists hold, the situation is different: China was not, in the past, an imperialist country, but a semi-colonized one;43 more than 90% of the PRC’s population is Chinese and it is this nationality that is most capable of leading other peoples to a higher stage of historical development;44 furthermore, the Chinese say, “establishment of a united, multi-lateral state was the desire of the great bulk of the people of all nationalities in our country”.45 And since the implementation of self-determination, including secession, is only applicable in situations of inequality, and all nationalities are equal within the PRC, it is argued, the question simply does not arise in the PRC.46

The post-revolutionary policy propagated a gradual, unforced “growing together” under socialism. To facilitate this process, the minorities were given a right to “autonomous government”. The basic outline of this policy can be seen in articles of the Common Program of 1949, relevant to minorities. Article 50 reads:

All nationalities within the boundaries of the PRC are equal. They shall establish unity and mutual aid among themselves, and shall oppose imperialism and their own public enemies, so that the PRC will become a big fraternal and cooperative family composed of all nationalities. Greater nationalism and chauvinism shall be opposed. Acts involving discrimination, oppression and the splitting of the unity shall be prohibited.

40. Dreyer, op.cit. note 13, 91.
41. Id. 60.
42. Id. 67.
44. G. Mosely, Consolidation of the South China Frontiers, Berkeley 1973, 68.
45. Chang Chih-i, quoted in Mosely, Id. 68.
46. Id.
Article 51 states:

Regional autonomy shall be exercised in areas where national minorities are concentrated and various kinds of autonomy organizations of the different nationalities shall be set up in accordance with the size of the respective population and region. In places where different nationalities live together and in the autonomous areas of the national minorities, the nationalities shall each have an appropriate number of representations in the local organs of political power.

Article 53 states:

All national minorities have the freedom to develop their dialects and languages, to preserve or reform their traditions, customs and religious beliefs.

However, none of the clauses concerning autonomy and freedom should be interpreted to mean that the nationalities were to be allowed to opt out of building socialism or communism. As is made clear in the Report on the Draft Constitution of 1954: "The building of a socialist society is the common objective of all minorities within our country. Only socialism can guarantee to each and every nationality a high degree of economic and cultural development." Thus, despite the acceptance of differences in style for each minority, the minorities were virtually obliged to follow the policy of the CCP. The intent of the Jiangxi program was apparently left behind.

During the first five years the minority policy was flexible and moderate. Resistance was passive and was generally not a cause of great concern for the Chinese government. In 1956, Chou-en-lai explained that the principle of equality was established, that further reforms should be carried out, and that "autonomous areas" should be set up. The minorities were included in the "Hundred Flowers" and "Anti-rightist" campaigns, in order to speed up socialist development. But, as a consequence, very strong criticism of the CCP and its policy was expressed by almost all Chinese minorities. Although the initial response of the Party was surprisingly mild, partly because it realized that reforms of the old system were not yet completed, this was virtually the end of the "moderate", gradual policy.

With the intention of increasing production, simplifying bureaucracy and achieving integral communism as part of the "Great Leap Forward", ethnic

47. Liu Shaoqi, quoted in Mullin, op.cit. note 22, 5.
48. Dreyer, op.cit. note 13, 140.
49. Id. 150.
diversity came to be viewed as an obstacle to the realization of the economic goals. "Whereas previous policy seemed formed around a concept of unity within diversity, allowing for a degree of ethnic and cultural plurality, the Leap aimed at unity through uniformity."

Communes were formed in nearly all minority areas, lamas and other religious figures were now reported to have joined productive labor, inter-marriages were encouraged, and the doctrine of class struggle was introduced.

Strong resentment against the drastic reforms manifested itself in many ways in the minority areas. In Tibet, in 1959, a revolt broke out in which, by China's own count, some 87,000 Tibetans were killed. This resulted in the flight of the Dalai Lama and some 100,000 other Tibetans to India, where they took refuge. In Xinjiang, where the minorities also became increasingly dissatisfied with the conditions in China, an exodus to the Soviet Union began. In 1964 some 70,000 refugees crossed the border. Overall, according to Dreyer, the effect of the Great Leap was largely negative: "If the Leap had been a failure in Han areas, it was a fiasco in minority areas." The problems became worse by setbacks in the economy, border disputes with India, and the deteriorating relations with the Soviet Union. Meanwhile, the presence of Tibetan refugees in India constituted a continuous embarrassment to the PRC. But the "moderates" once more were in power, and the policy towards the minorities lost some of its severity.

In Tibet, however, despite Mao's promise made in 1957, to delay "democratic reforms", Beijing now viewed the uprising as a reason to repeal all its pledges. Reports (e.g., by the International Commission of Jurists) suggest that during this period the Chinese treatment of Tibetans who opposed Chinese rule was unlenient and harsh. In 1965 Tibet was divided into five "special districts" (prefectures), which were further subdivided into seventy "hsien" administrative units (counties). The commune was the basic sub-"hsien" unit. The official designation of "autonomous region" was now conferred on Tibet. This process was facilitated by the fact that the Chinese had already set up military and Communist Party organs with real power alongside

50. Id. 160.
51. Id. 160-164; Avedon, op.cit. note 29, 273-344.
52. From Chinese sources, quoted in Avedon, op.cit. note 29, 158.
54. Dreyer, op.cit. note 13, 171.
55. The Commission recorded: "On the basis of available evidence, it would seem difficult to recall a case in which ruthless suppression of man's essential dignity has been more systematically and efficiently carried out." International Commission of Jurists, The Question of Tibet and the Rule of Law 1959, 59. In later publications the Commission found that such violations were continuing. See: Tibet and the PRC 1960, 3; and Bulletin of the International Commission of Jurists No.20 and 21 Nov./Dec. 1964 resp.
all Tibetan governmental institutions.56 More than one-half of the area of
historic Tibet was not included in the autonomous region: Tibet's north-
eastern province of Amdo has been renamed Qinghai and is administered as
a separate province of China. A small area of Amdo has been annexed by
the province of Gansu, and Tibet's eastern province of Kham has, for the most
part, been annexed by the bordering Chinese provinces of Yunnan, Sichuan
and Gansu and also the new province of Qinghai. Within these provinces, the
Tibetan areas are administered as autonomous prefectures and districts. As a
result, over four million Tibetans (of the estimated six million in the PRC)57
are not included in the Tibetan Autonomous Region.

In 1966 the “Cultural Revolution” began. The radicals who followed Mao's
line seized power again, and this had immediate repercussions in the minority
areas. Approval of regional autonomy as promised in the 1954 Constitution
was denounced as “obliterating the essence of proletarian dictatorship”, the
“unity of all nationalities on the road to socialism” was stressed, and the
theory of the “special characteristics” was again attacked.58 Dreyer
distinguishes two special features of the “Cultural Revolution” in the minori-
ty areas from that in Han areas.59 First, the attack on the “Four Olds” was
more far-reaching, because of the Party's previous regard for old customs,
culture and ideas. Second, the Red Guards contained a small but determined
group of Han who had been sent to minority areas against their will. This may
be a reason for the severe hardships the minorities faced during the following
ten years.60

A draft state Constitution of 1970 mentioned autonomous areas only by
noting their inalienability and reducing their rights.61 The Draft did not have
any legal force but may be characteristic of conditions at that time. In 1971
there was a brief switch towards a more moderate policy, but this was followed
by an uprising for independence in Tibet in 1972 in which 12,000 Tibetans are
believed to have been killed.62 Although the political demise of “the Gang of
Four” had, already in 1976, led to large-scale liberalization in the rest of
China, it was not until 1970 that signs of better things to come reached Tibet.

56. P.P. Karan, The Changing Face of Tibet 1976, 25. See also: G. Ginsberg and M. Mathos,
Communist China and Tibet: The First Dozen Years 1964.
57. Official Chinese population numbers usually refer only to the Tibetan Autonomous Region,
today about 1,930,000.
58. Dreyer, op.cit. note 13, 209.
59. Id., 207.
60. See: Avedon, op.cit. note 29, for various accounts. Also: P.H. Lehmann and J. Uullal, Tibet:
Das Stille Drama auf dem Dach der Erde, Hamburg 1981.
62. Information Office of H.H. the Dalai Lama, Dharamsala, India.
2.3 The 1980s

In 1979, a delegation of Tibetan exiles representing the Dalai Lama began a long tour of their homeland as guests of the Chinese government. The delegation of exiles was extremely critical of what they had seen. Although it was agreed with the Chinese authorities that no official account of their report was to be published, the emotional welcome the delegation received in Tibet is believed to have come as a profound shock to the central government in Beijing.63

In May 1980 Party Secretary Hu Yao-Bang visited Tibet to see for himself what was going on. He, too, appeared to be shocked by the situation in Tibet. He announced the following six requirements aimed at creating a "new, united, prosperous and highly cultured" Tibet.64 These included:

1. Anything that is not suited to Tibet's conditions should be rejected and modified, along with anything that is not beneficial to national unity or to the development of production. To demand "uniformity in everything" was condemned as "subjectivism";
2. Efforts must be made to "lighten the burden of the masses". To this end all taxes and State purchasing quotas were to be abolished for two years;
3. Peasants should plant whatever crops they wished and no one should interfere; private production should be encouraged, since "getting rich is nothing to be afraid of"; policies should be "relaxed, relaxed and relaxed again";
4. Although the central government already spends more funds in Tibet than in any other province or autonomous region, the center will increase funds for Tibet still further;
5. "So long as the socialist orientation is upheld", vigorous efforts must be made to revive and develop Tibetan culture, education and science. The world-renowned ancient Tibetan culture, included fine Buddhism, graceful music and dance, as well as medicine and opera, all of which are worthy of serious study and development;
6. "Unhealthy tendencies" prevalent among some Han cadres should be corrected. These tendencies were said to include "taking advantage of their position and power to assign jobs to their own men" and "violating the nationality policy". More responsibility should be given to Tibetan cadres.

63. See: Mullin, op.cit. note 22, and Avedon, op.cit. note 29.
The officially-defined policy has since been expressed in similar terms. The Mongolian minority leader Ulanfu said in 1970: "We must now scrupulously strengthen the execution of formal rights and directly formulate laws and decrees which protect the rights of the minority nationalities." In Tibet, this policy resulted most visibly in the relaxation of the restrictions on religious practice, the rebuilding of monasteries that were destroyed during the Cultural Revolution and an increase in economic activity.

Following the inspection tour in Tibet of Hu Yao-Bang in 1980, it was announced that 85% of all Chinese cadres would be withdrawn within three years. Yet shortly thereafter, government started to encourage the settlement of Han-Chinese in border regions, in order to "help these economically and culturally backward regions". The government decided to "raise appropriately the pay of those who went to work in Qinghai, Tibet, and other Tibetan plateau areas". A large influx of Han-Chinese into Tibet and other minority areas has been the result.

The Han-Chinese population in Xinjiang has grown, from 6% in 1949 to more than 42% today. Many estimate that the number of Han is already twice the officially-acknowledged number. In Inner Mongolia the Chinese now outnumber the Mongolians by 18 million to 3 million. The Hui, or so-called Chinese Muslims, have been encompassed by Chinese settlers in Ninxia Hui Autonomous Region and account for only 10% in the Gansu Autonomous Region. According to the Tibetan refugees, the Chinese have, up to this day, sent a total of 6.2 million civilians into the Tibetan plateau (the historical area of Tibet), in addition to which they maintain 500,000 troops in that area. Since the Tibetan population is around 6 million, they say, the Chinese have already outnumbered the Tibetans on the Tibetan plateau. The official Chinese sources, on the other hand, have stated that there are only 73,000 Chinese civilians in Tibet. Although all figures are difficult to verify, it has been the conclusion of many observers that the Chinese outnumber Tibetans in most areas of population concentration.

65. Hongqi (Red Flag) No.5 1980, 16.
70. FEER, 10 Dec. 1987, 39.
72. Ibid.
73. See e.g., Elliot Sperling, in testimony before the US Subcommittees on Asian and Pacific Affairs and Human Rights and International Organizations on the situation in Tibet, Asia-
dent Donnet the results of this policy seem clear: "In this way the Chinese may quietly but definitely complete the integration of this region called 'the roof of the world' into the rest of China." 74

The transfer of Han-Chinese into minority areas might be one of the reasons why the local resistance against Chinese rule remains remarkably strong, despite the proclaimed relaxation of policy. The pro-independence demonstration in Tibet last year is only the latest of a number of anti-Chinese incidents, 75 but it is the first to be covered by the international press. There were three protests, beginning on 27 September with a march of Buddhist monks loyal to the Dalai Lama, by an estimated 2,000 people, and on 1 October a street riot left 14 persons dead (unofficial reports say 19). Only after more troops were sent in, who confined the monks to the monasteries, expelled foreign journalists and individual travellers, and closed the border with Nepal, did the Chinese secure their grip on the Tibetans. Later, hundreds of Tibetans were arrested. 76 A letter smuggled from Tibet, written by lamas from Lhasa's Sera monastery, may be illustrative of the demands of the demonstrators:

May Tibetan customs and religion flourish . . . We Tibetans are followers of the Dalai Lama and have historical records of being an independent nation. Under Chinese occupation we have no freedom. We will continue to revolt against the Chinese . . . The UN and people of the world, please help to restore independence and freedom to Tibet. 77

In Xinjiang, the Chinese treatment of the native Muslims kept the relations tense until 1980. In the beginning of 1980, several hundred civilians were killed during a fight, caused by a dispute that had arisen from the government's attempt to "control" religion. In 1982 Kashkar and other areas throbbed with violence between Han-Chinese and the largely Turkic Muslim population of Uighurs and Kazakhs. 78 Virtually all the mosques were closed during the "Cultural Revolution"; they were allowed to reopen only in 1980, after the

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75. See for some anti-Chinese incidents in recent years: The Spectator, 14 Sept. 1985; TR Nov. 1986: "It is believed that the outbreak of violence is an indication of growing resentment about the huge influx of Chinese immigrants to Tibet, who deprive the Tibetans of their means of livelihood."; TR, Mar. 1987, 4.
76. Foreign tourists present in Lhasa during the riots but later expelled, said that some 600-900 Tibetans were arrested in "Lhasa, closed city"; FEER, 10 Dec. 1987.
77. FEER, 5 Nov. 1987.
fights. In 1985, 200 Uigurs, representing the number admitted to university each year, publicly demanded increased minority rights, a relaxation of family planning regulations and, most strikingly, an end to nuclear testing. Yet the relaxation of minority policy is most visible in Xinjiang: Islam is staging a remarkable comeback, and due to a significant upturn in economic activity, the overall level of prosperity rose considerably.

Although the policy in Tibet prior to the incidents tended to be moderate, it should be noted that one of the six charges used to denounce Hu Yao-Bang in January last year, as part of the campaign against "bourgeoisie liberalism", was his effort to initiate liberal policies in Tibet. On the other hand, in the course of the campaign, the liberal thinker Liu Xinwa was dismissed from his post as editor of People's Literature on the grounds of "hurting the feelings of the Tibetan compatriots". His magazine had published a story which described in an inappropriate style such Tibetan customs as "sky burial" and Tantric sexual rituals.

As could be expected, in the aftermath of the demonstrations in Lhasa the Chinese authorities tightened their control over Tibetans and the more liberal minority policy, as far as Tibet is concerned, seems to have been suspended. As for the future, however, the new Communist Party General Secretary Zhao Ziyang has promised that the minority policy would remain unchanged: "China will oppose separatism and illegal religious activities in Tibet, but this in no way means alteration of our policies towards nationalities and religion".

3. Minorities in the Current Law

Since 1979 the Chinese government promotes "legalization" as a means of solving problems of political instability and economic development. The political leaders regularly use in their speeches such phrases as "strengthening the legal system" and "governing the country by law". In 1986 Deng Xiaoping summarized the major task of the present generation: "pay equal attention to national construction and to the building of the legal system". As a result, the legal system has developed quite dramatically. The PRC adopted a great number of laws, some of which had previously been non-existent. In 1982 a new Constitution came into force, in which the legal policy was con-

82. BR 12 Jan. 1979, 25, 30.
firmed: "The state upholds the uniformity and dignity of the socialist legal system ... all state organs ... must abide by the Constitution and the law.

The Constitution contains several clauses that refer to "human rights", establishes a framework for greater distribution of legislative power among administrative levels, and sets up a more elaborate system of review.

In a number of the recently enacted legal documents there are interesting references to the minority peoples. There are also signs that the legal campaign has actually reached local administrative levels: the Secretary of the regional party committee of the Tibetan Autonomous Region, Wu Jinhua, said in a speech that the regional people's congress is drafting laws to protect local religion and social customs. Thus the more liberal policy towards minorities might be implemented by means of law. One may, therefore, legitimately raise the question which forms the basis of this part of the article: "To what extent does the current legal revival affect the position of the minority people in the PRC?"

Studying the law in China requires an understanding of Chinese culture and thought, as the meaning of law differs considerably from the Western legal traditions. In the popular mind in China the ideas about "law" are very vague, and there is little consensus about what constitutes "law" and what its function is or ought to be. Although there are many documents in the PRC that might be called statutes and laws, their effect on official behavior is not always clear. Some institutions and practices are called "legal", but they do not seem to have been important to the Chinese themselves in governing their society. As a consequence, as Don Clarke accurately puts it: "The chief problem for students of the modern Chinese law is one of finding it." According to orthodox communists, the Western rights and freedoms are actually "false" freedoms which mask the domination by the bourgeoisie in capitalist societies. In present-day China it is still generally accepted that law merely serves the political authorities; in the past it served the bourgeoisie, but now it serves the "leadership of the people", i.e., the Communist Party. This was expressed by Zang You Yu: "Law has to serve politics. What should be included in a constitution depends on whether or not it is advantageous to the present political objectives". Or as Qiao Shi of the Chinese Law Society has put it: "the science of law has a strong political nature"; "It is a Marxist science of law with Chinese characteristics." Therefore, the political-legal organs are said to have two functions: "first, to exercise dictatorship towards

87. See note 83.
enemies, and second, to exercise democracy towards the people". In this sense, law is regarded as an instrument, a weapon of the official leadership. This association with dictatorship inevitably colors the meaning of law, for the subjects in a dictatorship have no rights. Therefore, while studying the law of China, we cannot conceive of it merely as a set of neutral rules or as a source of rights.

Nevertheless, it seems to be clear that if the current economic and political decentralization continues, giving more autonomy to state enterprises and lower administrative levels, conflicts and disputes cannot be resolved by policy alone. As a result, the large number of new laws are likely to play a greater role among administrators, and this, in turn, might lead to a greater public awareness of law and its application. Also, Western legal principles such as “human rights” and the “rule of law”, as accepted by the international community to which China wishes to belong, might eventually have some effect on the Chinese way of legal thinking. Finally, the takeover in 1997 of Hong Kong, whose legal system will remain based on the Common Law, might be a source of Western legal ideas for China. Therefore, the present study of minority laws may have some relevance, however small, to the understanding of the Chinese-minorities relations.

4. The Constitution

As part of the policy of “strengthening the legal system”, China adopted, in 1982, a new Constitution. Since, as a Marxist state, China is subject to a progress through various stages, the Constitution of the state has to be changed correspondingly. The 1982 Constitution, therefore, contained several substantive changes. Notable changes were made in the administrative structure, which seem designed to delegate more power downwards to the local governments, i.e., the autonomous areas where most minority groups live. Also relevant to minorities are indications of a reform to improve democratic procedure and to strengthen individual rights.

We must keep in mind, however, that the meaning of the Chinese Constitution is different from the Western democratic constitutions. Basically, the Constitution expresses the state's intentions and bestows "citizenship" upon its inhabitants. It is not a contract between the state and the individuals in order to protect individual rights. Nor is it merely a statement of past achievements or a description of rights currently enjoyed by Chinese citizens. Rather, it expresses the intention that Chinese citizens "shall" enjoy certain

rights which they do not necessarily enjoy yet, but this will depend on whether the citizens will observe the numerous "duties" prescribed by the Constitution as well. Despite these reservations, the Constitution can be viewed as a very important political document; it is a public and official statement of China's current policy aims and it establishes an institutional framework designed to facilitate their implementation.

To support or implement these policies, laws have been enacted that further refine the constitutional provisions. Particularly relevant to the minorities is the Law on Regional Autonomy for Minority Nationalities, adopted on 31 May 1984. It should therefore be interesting to look at the constitution and the other laws in some detail, as far as it concerns minorities.

In the preamble to the 1982 Constitution the PRC is defined as a "unitary multinational state built up jointly by the people of all its nationalities". The preamble continues by saying that "it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also to combat local-national chauvinism". This appears to be the only reference in the Constitution as to who the nationalities of the PRC are: the Han-Chinese and local nationalities. Although the preamble states that "socialist relations of equality" have been established among nationalities, by warning against "big nation chauvinism" the potential inequality between Han-Chinese and minority peoples is acknowledged. In publications such as the (non-legal) Beijing Review, the Chinese have recognized 55 racial groups as "nationalities". However, despite the fact that the "local minorities" (in most provisions referred to as "minority nationalities") are mentioned frequently, the Constitution fails to make clear what actually constitutes a "nationality", nor does it explain why the distinction in the Constitution between various nationalities is relevant.

Apart from the term "minority nationality", the Constitution speaks of "citizens" and "people". Whereas the latter carries a purely political, not legal, connotation ("people" are the opposite of "enemies of the people"), the term citizenship is used in establishing the rights or duties of the inhabitants of the PRC. Article 33: "All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China [. . .] Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law." The Constitution also stresses the fact that all citizens are equal, yet in several articles a substantial distinction is made between "citizens" and "citizens of the nationality". For example, the citizens of the nationality are promised "appropriate repre-
sentation" in government organs, which "is exercising regional autonomy in the area concerned", and the head of which "shall be a member of that nationality".93

Thus the term "minority nationality" is of a substantial legal-political value, but the only criterion the Constitution provides for is that minority nationalities have "distinct languages, ways and customs".94 In other words: a racial qualification. Curiously, from China's attitude towards the minorities of the Tibetan ethnic group, we might conclude that this criterion disregards borders and even citizenship of the PRC: Tibetan refugees visiting the PRC have to sign a document with the Chinese embassy, classifying them as "Chinese Overseas Nationals" (Huaqiao);95 even Tibetans who were taken to other countries under official government programs and who now hold passports of these countries have to sign these documents, despite the fact that the Chinese Nationality Law rules out dual nationality.96 Therefore, in this line of thought, the concept of "minority nationality" would enlarge the group of potential citizens. If all China's racial groups were to be treated as the Tibetans are treated, this would take in the entire population of the People's Republic of Mongolia as well as a great number of ethnic groups in Soviet Central Asia who are "separated" from their fellow Kazakhs, Kirghiz, Uzbeks and other ethnic groups in China's Xinjiang.

Thus from a legal point of view, the concept of "minority nationality" leaves us with vagueness and ambiguity. It is, nevertheless, important to assess the relevance of the numerous references to minority nationalities in the legislation.

5. The Concepts of "Autonomous Government"

The first Chinese Communist Basic Law, the Jianxi program of 1930, gave minority nationalities the right of national self-determination, even to the point of secession from China and establishment of their own independent states. This provision was not repeated in any other constitution. In the first three PRC constitutions (the first promulgated in 1954), the minorities retained the much weaker and vaguely defined right of "autonomy".

In the 1982 Constitution the first mention of autonomy is found in Article

94. This is mentioned in the last paragraph of Art.4, PRC Constitution 1982.
96. Art.9 of the Nationality Law states that any Chinese national who has settled abroad and has been naturalized there or has acquired foreign nationality of his own free will automatically loses Chinese nationality.
4: "All national autonomous areas are inalienable parts of the PRC." The same Article provides for the establishment of organs of self-government "for the exercise of the right of autonomy" in "areas where people of minorities live in compact communities". A little more light is shed on the meaning of this provision in Article 6 of the Constitution and the Law on Regional Autonomy for Minority Nationalities.

The essence is explained by Ngapo Ngawang Jigme, currently Vice-Chairman of the NPC Standing Committee and Chairman of the NPC Nationalities Committee, as follows:

On the one hand, the unified leadership of the Central People's Government must be guaranteed and its general principles, policies and plans must be implemented. On the other hand, the full power of autonomy of the organizations of self-government of national autonomous areas must be granted and considerations must be given to their special characteristics and needs.97

The autonomous organizations of government, explains Ngapo, are in fact "both ordinary local state organizations and organizations of self-government".98 Basically, the Constitution and the Autonomy Law grant local organs of government a little more flexibility in implementing central government policies than the provincial authorities possess. Thus the "autonomy" of the regions means no more than a limited delegation of governmental authority from Beijing to the local authorities. Therefore, the term "autonomy" as mentioned throughout China's legal documents, should not be regarded as constituting a similar degree of independence from central control as it would in some Western democratic countries. Emphasizing this, Deng Xiaoping declared — in relation to possible reunification of Taiwan — that within the PRC "autonomy" has its limits and so, "complete autonomy is simply out of the question".99

Nevertheless, in comparison with previous constitutions, the present constitution pays considerably more attention to minorities. The equal rights of minority nationalities are now specifically mentioned and their "appropriate representation" is now constitutionally guaranteed.100 A new clause has been adopted in Article 4, which reads "the state helps the national minority areas to speed up their economic and cultural development in accordance with their special characteristics and the needs of each of them". One of the new func-

98. Ibid.
tions specifically accorded to the state council is to safeguard the equal rights of the minorities and the right of autonomy of the national autonomous areas. In Article 70 of the Constitution a Nationality Committee of the NPC has been established to examine, discuss and draw up relevant bills.

But most significant are Articles 116-122 of the 1982 Constitution in which the organs of self-government in the autonomous regions have been given new legislative powers as well as greater power of independent administration. "Autonomous regulations" and "specific regulations in the light of local conditions" may be passed by the people's congresses in autonomous regions (Art.116). Those drawn up by the people's congresses in the autonomous regions must be approved by the standing committee of the NPC to become effective. What is new in the 1982 Constitution is that those drawn up by the autonomous prefectures and counties (the middle and lower levels of government in those regions) need only the approval of the standing committee of the people's congresses of the province or autonomous region, not of the NPC. All regulations are, of course, subject to the Constitution, regional autonomy laws and other state laws, yet there may be a substantial increase in the freedom of action for the middle and lower levels of administration. But this does not mean that they are out of the reach of central control. For the NPC standing committee has the power to repeal decisions of the organs of the provinces and autonomous regions (e.g., if they contravene the Constitution, the statutes or administrative rules and regulations). It can therefore annul the decision of an autonomous region to approve regulations passed by an autonomous prefecture or county. In addition, the central government possesses the power to impose "coordination" and "uniformity", and to protect national security. Thus the powers of local administrations are still ultimately subject to central control. But now the control takes place after the event, rather than before. And the increase in regulations will make control in practice more difficult. As a result, the local state organs are likely to enjoy relatively more independence.

The 1984 Autonomy Law spells out the provisions of the Constitution and is, by and large, similar to the previous law, only more detailed. In Articles 16 and 19 it grants to some organs greater legislative powers concerning "special" policies, derived from national laws, such as family planning, birth control, and so on. In recent years, the autonomous provinces have used the increased autonomous powers especially in the economic field. In Xinjiang, local officials are now responsible for setting most of their own priorities and

development targets, and for investing their own profits. A high Xinjiang official said that the regional government is even permitted to reject any development instruction from Beijing which it feels is not in the interest of the area. However, this increase in economic autonomy may not, in fact, be as fundamental as it appears. There is no major change in the institutional planning structures above enterprise level, thus central planning will remain the basis of China's economic management system.

5.1 "Democracy"

In order to understand what the increase in the powers of lower administrative institutions means for minority participation, we now turn to the electoral system of the PRC. The electoral system has recently been subject to a major reform. This was part of a larger thrust in Chinese politics called "democratic institutionalization", which means "strengthening the role of the people in Chinese politics by guaranteeing regular and legal procedures of participation and of leadership responsibility". The 1982 Constitution retained the "People's Congresses" system and added provisions contained in the 1979 Organic and Electoral Law. It mandates direct elections of county-level congresses and says that the NPC and the deputies of the local people's congresses are to be "democratically elected". This shift in language from 1978's "secret ballot after democratic consultation" made room for such practices as multiple candidates for each post, introduced by the 1979 Election Law.

The equal "democratic rights" of minorities are now expressly mentioned in the 1982 Constitution. Articles 59 and 62 prescribe "appropriate representation" of minorities in both the NPC and the standing committee. The norms established by the Electoral Law give them in fact a considerable numerical bias: if 15% of the population belongs to a minority group, they will be entitled to get twice as many deputies as the Han people.

Article 113 of the Constitution states that either the chairman or vice-chairman of the standing committee of the people's congress of autonomous region, prefecture, or county, should be of the region itself. Article 114 prescribes that administrative heads of autonomous areas should be from the region itself.

In conjunction with these "democratic reforms", a gradual movement of minority cadres into positions of authority has taken place. In the Tibetan

104. Enders Wimbush, op.cit. note 69, 6.
Autonomous Region, according to official Chinese sources, Tibetan nationals now hold top government positions in 68 out of 75 districts, and of some 51,500 persons employed in the administration, around 31,900 are Tibetans or other minority people, i.e., 62%.\textsuperscript{107} Out of seven secretaries of the city administration, five are Tibetan. Also, among the city leadership, of the 21 deputy secretaries, five are Tibetans and eight are Chinese. The leadership in the prefectures reflects a similar pattern: all six \textit{Chuan Yuans} are Tibetans. And of the 27 deputy \textit{Chuan Yuans} 15 are Tibetan and 12 are Chinese.\textsuperscript{108} In Xinjiang, too, the minorities account for a considerable percentage of administrators at the provincial level: 65% of the People's Congress delegates, 42% of the heads of bureaux, 65% of the standing committee members.\textsuperscript{109} At first glance, the figures are an impressive achievement. But the basic pattern of having at least one Chinese from outside in all the committees has not been altered, and it is not clear how much power the minorities can really exercise. On a local level in Xinjiang, the minority representation is still small, while in the administration of prefectures and counties, minorities usually form large majorities.\textsuperscript{110} Moreover, the locals who are appointed to high positions in Tibet are reported not to have much standing among the minority people themselves.\textsuperscript{111}

It should also be pointed out that the reasons for the reforms are not similar to those underlying a Western democracy with individual rights. The current concern with procedural democracy and appropriate representation comes primarily from the negative experience of the Cultural Revolution. The lesson from the chaotic decade was that effective and productive influence required legal guarantees and procedural rules. As Brantley Womack says, "The reform rather stems from the need in Chinese politics for guarantees of popular control of leadership and for legal limits to leadership behavior."\textsuperscript{112} The reforms, therefore, should be viewed as an attempt to effectively control popular and reluctant local leadership and to prevent authority leakage from central government. Thus, the fundamental contradiction between central control and participatory institutions remains, making actual democratic participation of the citizens extremely difficult.

It is even more important to realize that in a socialist state with a one-party system, like the PRC, the main power does not reside in the machinery of the government (in which the change in favor of the minorities occurred), but in

\textsuperscript{107} TR Jan./Feb. 1987.
\textsuperscript{109} Enders Wimbush, \textit{op.cit.} note 69, 9.
\textsuperscript{110} Id.
\textsuperscript{111} Illustrative is the appointment of Dorje Cering who was named acting chairman of the Tibetan Autonomous Region; see TB Dec./Jan. 1986.
\textsuperscript{112} Brantley Womack, \textit{op.cit.} note 105.
the Communist Party. Government officials are for the most part party members and have traditionally governed (and have been selected) on the basis of unpublished internal party decisions without paying much respect to the law. An essential element of the current campaign to strengthen the legal system is the re-interpretation of the principle of party leadership. For example, in the 1982 Constitution no substantive article grants the party a direct rule over any state organ and attempts are being made to separate Party and government functions. As implementation of these policies requires obedience to the laws formulated to this end, the cadres are asked to give up the attitude of relying on internal Party rules and to rely on the law instead.

In practice, however, this means asking the cadres to forsake the role they have played for more than thirty years. Their power should no longer be derived from their status as Party members but from a set of written laws, and their obedience to the local Party committee should be replaced with obedience to state laws. As this means the removal of a large amount of discretionary powers from the hands of local Party committees, it will be a considerable task. Reports suggest that local cadres are having difficulty coming to terms with this change of line; old cadres, appointed before the 1980 reforms, are finding it particularly hard to change their views. (As a matter of fact, in minority areas this may also be so because many of them enjoy the support of the local military command which, in the strategic border regions, may have the last word.) The implementation of the campaign is further hindered since the cadres are by no means forced to stop interfering in fields beyond their authority. Governing according to law is only a voluntary, though strongly recommended, work style. And if the cadres are considered to have violated the law, then they are usually dealt with — if dealt with at all — by party disciplinary procedures, instead of being brought before the court.

Moreover, the central authorities are asking the local cadres to respect the law, while they themselves, at the central level, take their directions largely from Party policy without being limited by law. The NPC, the supreme state organ, still possesses the power to interpret laws independently and to set forth policies and laws not necessarily consistent with existing legislation. There is as yet no independent judiciary or other organ that has the power to examine whether authorities govern in conformity with those laws. In the traditionally hierarchically structured Chinese bureaucracy the local officials are likely to follow the example of their superiors. Therefore, to successfully implement the "legality campaign", a major political and ideological change is required as

113. This policy is reinforced by the 13th Conference of the Communist Party, held in Oct. 1987.
115. Clarke, *id.*
well, at the lowest échelons of administration as well as at the top, and not merely the passing of new laws "with legal guarantees".

As long as this political transformation has not taken place, party policy will prevail over law, and the Party will dominate the government. Changes in merely the governmental structure and the ethnic origin of its members can therefore not fundamentally alter China’s political system. The body that remains effectively in charge in Tibet is the Communist Party committee, whose First Secretary, Wu Jinghua, is not Tibetan but, curiously, a member of the Yi minority from outside the region. As Deng Xiao Ping says: "China would fall to pieces and be incapable of achieving anything without the leadership of the Communist Party."116

The fact that many Tibetans — and presumably other minorities — are excluded from membership in the Communist Party by virtue of the regulation that only atheists are eligible for membership, may therefore be another major obstacle for an increase in minority participation.117 It is a well-known fact that most Tibetans are Buddhists. Finally, and at present perhaps most importantly, it is becoming quite evident that an increase in minority participation in government cannot be meaningful if the large-scale Han-Chinese settlement in minority areas is to continue to grow.

To sum up, due to the fundamental tendency in Chinese society towards central control (notably in law and policy), the dominance of the Communist Party, the remaining restrictions on effective minority participation and the continuing immigration of Han-Chinese, it is not very likely that minority people will benefit from democratic reform, nor from any change in the administrative structure. Beijing does not appear to be genuinely attempting to hand over the reigns of power to minority people. Thus, the present legal and political changes will only be of superficial value, mainly projecting a better image of China’s rule in the minority areas. This chapter may be summarized with the words of Andrew Nathan:

Instead of enabling the citizen to influence government, the entire web of participatory organizations is designed to, and does, render the citizen more susceptible to control from the Communist Party center in Beijing.118

117. Mullin, op.cit. note 22, 12.
6. Individual Minority Rights

In the post-Mao legislation a substantial change in the area of political rights concerned the rights of minorities. As a result of the significant change in emphasis, from class struggle and revolution to promoting national unity and stability, the 1982 Constitution restored and enlarged national minority rights that had been listed in the 1954 Constitution and condensed or deleted in those of 1975 and 1978.

The equal rights of minorities are now specifically mentioned and a number of guarantees appeared. The provision guaranteeing equality of all citizens before the law was omitted in the 1975 and 1978 Constitutions, but in 1982 it reappeared in Article 33. There is a new non-discrimination clause accompanying the right to vote and to stand for election which states that those rights apply “irrespective of nationality, race, sex, occupation, family, origin, religious beliefs, education, property status or length of residence” (Art.34). Further concern for the minorities’ religion is expressed in Article 36 which states that all citizens enjoy the freedom of religious belief. In addition, a new provision is included in Section VII of the Constitution on the “People’s Courts and People’s Procuracies” guaranteeing the right of citizens of all nationalities to use their own written and spoken language in court proceedings and to be provided with interpretation where necessary. The local language should also be used in administrative matters.119 Furthermore, after 1980 China acceded to several international treaties, some of which concern human rights. Among them is the International Covenant on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Though Chinese scholars reject the notion that individuals can be subjects in international law, the concept of protection of human rights is accepted.120

Are these new and improved rights more likely to be implemented than in the past? A number of restrictions and limitations on the actual exercise of these individual rights and freedoms should be mentioned.

First, the state’s power to limit the rights by statutes and administrative regulations, though this time not as a general principle, unquestionably underlies this constitution. The state can limit rights for a purpose as long as it does so by law. In addition, the absence of ordinary law elaborating on a particular constitutional right might mean that the right cannot be enforced in a court.121

120. Edwards, op.cit. note 30, 53.
121. For example, although Art.41 of the Constitution grants citizens the right of compensation for losses through infringement of their civil rights by any state organ, there is no enforceable right to such compensation because no law governing the procedure for claiming compensation has been enacted.
Second, on the subject of constitutional review and enforcement the 1982 Constitution still holds the traditional view. The power to interpret and enforce the law is not in the hands of the Procuracy and courts, but of the NPC. The new constitution has withdrawn the 1978 provision giving the Procuracy the power to look into whether the administrative bureaucracy is operating within the limits of the law. Thus the definite nature of the new legislation can only be enforced by the supreme legislature and its standing committee.

Third, there is as yet no law providing for the mechanism whereby individuals can challenge the validity of regulations or decisions made by governmental authorities so as to protect their rights. In the Chinese system only an internal machinery has been provided whereby the administration conducts its own investigations and supervision of alleged abuse of power. A system of external safeguards, including an independent judiciary, has not been developed, although the 1982 Constitution, in Article 41, paragraph 2 has included the right of individuals to make complaints and lodge appeals. This, and the duty of state organs to have arrangements for the "reception of the masses" are not, of course, very likely to provide for effective protection of the new individual rights.

Finally, although the number of clauses concerning individual rights is considerable, several other provisions — including the "fundamental duties of citizens" — clearly invite limitations of these rights. For example, in the 1982 Constitution, whereas Article 35 guarantees freedom of speech, of the press and of demonstrations, Article 1, paragraph 2 states: "The socialist system is the fundamental system of the PRC. All persons are prohibited from using any means whatsoever to undermine the socialist system."

The new Criminal Law and the Law of Criminal Procedure, also relevant to minority people, similarly provide in principle for greater protection for individual rights, but at the same time contain provisions which can be used to imprison people for the peaceful exercise of these rights. These are included in the chapter of the Criminal Law dealing with "counter-revolutionary" offences. In particular, Articles 90, 98 and 102 of the Criminal Law provide imprisonment for people found guilty of the following offences: "counter-revolutionary propaganda and agitation"; organizing or taking part in a "counter-revolutionary group"; and incitement "to resist arrest or violate the law and statutes of the state". Minority people have been detained under these provisions for expressing their opinions.122 Many were convicted under articles of the Criminal Law which refer to "endangering the sovereignty and security of the motherland" and "supplying information to the enemy".123

122. Report by Amnesty International, China: Violations of Human Rights, London 1983, 6-9; The Economist 15 Jun. 1985, reports that there may be as many as 400,000 Tibetan political prisoners.

123. Id.
Another regulation under which minorities (as well as "prisoners of conscience") are detained is the 1957 "decision" of the State Council of the PRC "On the Question of Re-education through Labor". It provides for the detention without trial of people considered to have "anti-socialist views" and of "hooligans", for the purpose of "re-educating them through labor". Although this is said to be primarily a matter of "additional education", it obviously constitutes an abridgment of the enjoyment of human rights.

In other words, the implementation of rights and guarantees is still a matter of policy. From this point of view it is not very likely that the improvement of the individual rights shall affect the actual position of minority people. In fact, there is considerable evidence indicating that the rights of minorities are still blatantly ignored. In Tibet, Western observers have noticed remaining discrimination against Tibetans in such fields as employment, education, religion, housing and travel. To mention some observations by Elliot Sperling in a testimony before the U.S. Congress: most of the examinations that are required for employment in better jobs are given in Chinese, a factor that gives the Chinese a much better chance than Tibetans; schools do not offer equal education in Chinese and Tibetan, the necessary textbooks are not available in Tibetan; for Chinese willing to reside in Tibetan areas it is easy to find housing, but for Tibetans who come from outside the Tibetan Autonomous Region, it is practically impossible to receive the necessary permits.

Such policies that obviously violate the new legal provisions may still be dominant because many officials still hold the traditional view that it would be absurd to accord political rights to "opponents of socialism". Tibetans adhering to their traditional customs could possibly still be perceived as obstacles to socialist development, despite the new minority policy. As has been pointed out above, there is no reason to suppose that simply with the passage of a set of laws, the officials will conform their views and their conduct with those laws. To actually implement the policies as indicated in the new legislation, a major change in China's political system as well as in the ideology on human rights is required as well.

Freedom of religion is, of course, one of the main areas where the state's respect for the equality of minorities is put to the test. In the past it failed this test badly, but now new legislation provides in principle for a greater protection. Therefore, a closer look at the theory and practice of freedom of religion seems warranted. It might be an example of the Chinese protection of minority rights in general and perhaps an indication of the extent to which the new "human rights legislation" affects Chinese social reality.

124. Id.
125. Elliot Sperling, op. cit. note 73. See also Donnet, op. cit. note 73.
6.1 "Freedom of Religion" in Theory and Practice

Almost all minority nationalities are religious, and it is their religion which makes them distinct from the Han-Chinese. The Tibetans and Mongolians follow the Vayrayana form of Buddhism, and many nationalities, e.g., in Xinjiang, are Muslim. This has caused considerable problems for the Han-Chinese for, according to the official Chinese view, "religious problems of the nationalities are often intertwined with nationality problems". Religion not only played an important role in the national feelings of the minorities, in particular in opposing the atheist Communist policy forced upon them, but also in maintaining contacts with people abroad who are outside Chinese control. The Tibetans maintain links to the Buddhists in India, Nepal and Bhutan, and with their exiled religious leader, the Dalai Lama, in India; the Mongolians have ties to religious people in Outer Mongolia and also to the Tibetan Buddhist tradition; the Muslims consider Mecca as their Mecca, too, and are related to the Muslims in the Soviet Union, across the border.

For this reason, religious activities, persons and symbols, have been ruthlessly suppressed. In Tibet, for example, since the Chinese took full control in 1959, the number of Buddhist monasteries has been cut from 2,464 to ten. At the same time, the number of lamas, or monks, has shrunk from 110,000 to about 3,000. Many Tibetan Buddhists have been detained on purely religious grounds. Thus, according to a report of Amnesty International: "people are being arrested for showing loyalty to the exiled leader of the Tibetan Buddhists, the Dalai Lama, or religious scriptures and paintings. Some people arrested on such grounds were reported to be still in prison in the late 1970s." A similar policy was forced upon Muslim minorities.

The current Chinese leadership often blames this policy and its consequences on the chaos of the "Cultural Revolution"; evidence shows, however, that most Tibetan monasteries were destroyed between 1959 and 1961. Reports of the International Commission of Jurists suggest that from 1951 onwards China violated the fundamental rights of the Tibetan people, including

126. Usually referred to as Lamaism.
127. Muslims are spread throughout China, but large concentrations live in Xinjiang, Gansu and Xinhua. See, for Islam in China: Ibrahim Ma Zhao-chun, "The Internal Dimension", Journal of the Institute of Muslim Minority Affairs 1986 No.2.
129. This might be illustrated by the trip the Dalai Lama made to Ulan Ude, USSR, in late 1986, and earlier visits to the P.R. of Mongolia. Buddhism is dominant in Inner and Outer Mongolia, as well as in USSR's Kalmyk region and the Buriat Republic. TR Sept./Oct. 1986.
130. See Avedon, op.cit. note 29; Lehmann, Uullal, op.cit. note 60; T. Lhundup, "A Brief Summary of Conditions in Tibet", 20 News Tibet 1 Jan./Feb. 1985, 5; and Xinhua 30 May 1980.
132. See e.g., Ender Wimbush, op.cit. note 69.
133. See Wangyal, op.cit. note 22, 17.
the denial of freedom of religion by acts of genocide and by other systematic acts designed to eradicate religious beliefs". Most of the recent arrests of religious people reported to Amnesty International appear to be of people detained on political grounds, although religious feelings in Tibet are often connected with aspirations to independence; those who advocate the return of the Dalai Lama see him as both a religious and a political leader. But in 1983 several Roman Catholic priests were arrested merely for carrying out religious activities independently from the official church. Religion is apparently still a sensitive subject to the Chinese authorities. The suppressive attitude towards religion should therefore be regarded as not merely a temporary consequence of the "Cultural Revolution", but rather as a consistent feature of China's communist policy.

On the other hand, in recent press accounts and in the new Constitution, the protection of religious freedom is increasingly emphasized. Despite the orthodoxy inherent in the ideology of Marxism-Leninism and in Mao Zedong thought, current Chinese official policy apparently condones, though does not encourage, a certain amount of non-socialist thought. Rejecting the "Gang of Four's" practice of punishing individuals for their private and religious beliefs, the current Chinese criminal law, for example, punishes counter-revolutionary actions but not thoughts.

Although the 1982 Constitution, like the previous ones, does not explicitly endorse freedom of thought and conscience, it does express, in Article 36, a further concern for freedom of religious belief. Earlier constitutions protected only the freedom to adhere to religious belief and the freedom not to believe. By not permitting citizens to propagate religion, the Constitution virtually legitimized the suppression of any kind of activity which could be construed as "furthering religion". This may be indicated by the official interpretation of this constitutional right summarized in a booklet published by the information office at Chamdo (Tibet) in 1980. It contains advice for members of the Communist Party and the Youth League:

We must stop religion because it is blind faith [...] against the law and [is] counter-revolutionary [...] Although our constitution allows people to have the right to religion, it should be clear that Communist Party — & Youth Organization-members do not have the right to practice religion.

134. International Commission of Jurists, Tibet and the PRC 1985; (see also op.cit. note 55.)
136. Id.; another example is the arrest and imprisonment of the Tibetan religious teacher Geshe Lobysang Wangchuk since 1983. He was adopted by Amnesty International as a prisoner of conscience. Refugees' reports claim that he died in prison on 4 Nov. 1987.
137. Edwards, op.cit. note 30, 58.
138. Mullin (p.9) and Wangyal (p.19), op.cit. note 22.
Radio Lhasa was to add in 1982:

Communists never conceal their political viewpoints and openly declare their belief in materialism and atheism, not in any God or Savior [...] Therefore, they must all become ardent atheists [...] All Party men have the responsibility to propagate materialism and atheism by all means possible.\(^\text{139}\)

Ironically, in the same year 1982, the expressed freedom not to believe and to propagate atheism has been removed from the Constitution. Freedom of belief is now supported by a clause forbidding "all organs of the state, public organizations and individuals to compel citizens to either believe or not to believe or to discriminate against citizens on grounds of belief or non-belief". Article 36 also states that the state protects "normal religious activities".\(^\text{140}\)

The increased constitutional protection is, however, accompanied by a warning not to abuse this freedom: "No one may use religion to engage in activities that disrupt public order, harm the health of citizens, or jeopardize the state system." Finally, it is added that "religious affairs are not subject to foreign domination", which refers to Tibetans, Muslims and Roman Catholics alike.

In recent years the Chinese press increasingly expressed the need to respect the religious beliefs of the minorities. "Leftism" in particular is being attacked; "leftism" is currently regarded as the root cause of the past suppressive policy and the main obstacle towards a solution of the minority problems. The brutal policy of the past is now freely admitted: "religious sciences in literature and art were held mistakenly to be spiritual pollution, thereby destroying a great deal of outstanding culture and seriously hurting people's feelings".\(^\text{141}\) In leftism lies "the crux of all problems", and means that the "great Cultural Revolution must be totally negated".\(^\text{142}\) Leftism is described as "ideologically lacking sufficient understanding of the long-term nature of religion, and even restricting religion as a kind of spiritual pollution", and "denying that the national minorities have special characteristics".\(^\text{143}\)

It is not clear what is meant, in practical terms, by "leftism is the cause of all problems". But the purpose of the present policy is obvious: As an editorial

\(^{139}\) Id.

\(^{140}\) Which includes "organizing and utilizing feudal superstitious beliefs, secret societies or sects to carry out counter-revolutionary activities" (Art.99, Constitution), and "using counter-revolutionary slogans, leaflets, or other means to spread propaganda inciting the overthrow of the political power of the dictatorship of the proletariat and the socialist system" (Art.102, Constitution).


\(^{142}\) The Panchen Lama in a meeting of the second CCP Committee, SWB 3 Dec. 1985.

\(^{143}\) Id.
in the Red Flag states: "Whether we handle the religious affairs of minorities properly is still of great significance to our state's stability and national unity, and for the development of international relations."

It is also clear that the need to respect religious belief does not stem from the Western notion of respect of fundamental human rights. The present government's perception of the role of religion is still very much based on the traditional Marxist interpretation: "Religion is a phenomenon at a certain stage of human history. This phenomenon has to undergo the stages of emergence, development, and withering away." And since religion will wither away eventually, given the right circumstances, the CCP sees its current policy of increased freedom of religion only as a temporary measure. The Chinese official press says: "Marxists hold that declaring a war on religion is a stupid act", for "in the final analysis materialism will triumph over religion, because Marxism-Leninism is true and scientific", while "the religious mind is irrational".

From this point of view, we are able to understand the official Chinese statements, such as that recently published in the Red Flag's article: "Implementing the policy for protecting freedom of religious beliefs does not conflict with publicizing science and propagate atheism."

It is believed that giving publicity to "materialism and atheism, the Marxist theory of religion" and "eliminating feudal superstitious ideology", will lead to the disappearance of the causes that give rise to religion. But in the meantime, the Chinese citizens should carry on the "good traditions in religious activity" in order "to do more things for socialism". The statement "religion is an opiate for the people" is still held valid, but the "idea that religion can play only a role of poison" should be rejected.

According to current Chinese ideology, in history the feudal exploiting classes used religion as an opiate for its people, but revolutionary people and classes made use of religion as well. "Only under complicated social and special conditions, can religion play its role as poison." This has been "proved" by European and Chinese history; in Europe, Calvinism was used by the revolutionary forces in Holland, Scotland and England; in China the Taiping revolution and the Hui uprising likewise used religion. In this light, religion can be viewed as a useful instrument in achieving unity, economic progress, and so on. This is further complicated by the fact that, as the

147. See Jiang Ping, op.cit. note 141.
148. Id.
149. Id.
Chinese government noticed, there are many "Han-Chinese who profess Daoism, Buddhism, Catholicism or Protestantism but are not part of any nationality problem".  

Here the CCP is obviously faced with a dilemma. On the one hand, the leadership tries to weaken the strength of nationality feelings, and, on the other hand it attempts to promote the very causes which give rise to political and economic progress, nationalism and the feeling of "being Chinese". One of the leadership's solutions seems to have been to organize "patriotic religious organizations" which will carry out the policy of the CCP and only secondly propagate a view of religion that is acceptable to the Party; "The basic task of the patriotic religious organization is to assist Party and government."  

Another attempt is to officially distinguish between "normal religious activities" and "feudal superstitious activities", the latter including all the acts the government considers politically dangerous. Finally, by not including the freedom of propagating religion in the new religious freedom clause, the government is able to prohibit any religious get-together it perceives as a threat to Chinese control.

Overall, the present relaxation of the religious policy seems to be a product of China's internal political conflicts and of China's inability to find the right policy to deal with the resistance of the minorities. The change occurred not so much in the actual ideological views, but in the way religion "ought to be" dealt with in the PRC. In practice, some improvement has undeniably taken place, particularly in Xinjiang, where the Islam is emerging from its long travail. On the other hand, all kinds of restrictions seem to remain intact: in Tibet not all monasteries are allowed to reopen; the number of monks who are allowed to return to monasteries and the rituals to be performed are determined by the state; only a few monasteries are allowed to take novices; and China recognizes only the "incarnated" lamas (wrongly known as "living buddhas" who were discovered before 1959. These restrictions are likely to remain in effect, if not tightened, as a result of the violent unrest following

150. See supra note 144.
151. Id.
152. See supra note 140.
153. For the Islamic revival in Xinjiang, see, e.g., Enders Wimbush, op.cit. note 69. To illustrate the greater religious freedom in Tibet: 100,000 people attended a traditional Buddhist festival held for the first time in 20 years. SWB 18 Feb. 1986. This number is, however, small in comparison with the 400,000 people (including an estimated 40,000 from Tibet) who attended in December 1985 the preaching of the Dalai Lama in India. The Times 27 Dec. 1985.
a march of monks loyal to the Dalai Lama in Lhasa last fall. Hundreds of monks were arrested and confined to monasteries.\textsuperscript{156} There is considerable evidence indicating that every religious expression in Tibet is now looked upon with so much suspicion by the Chinese authorities that the practice of religious activities is practically impossible.\textsuperscript{157} The repeated attacks on "rightism" occurring in the first part of 1987, will likewise slow down the liberalization, for needless to say, "leftism", cannot be successfully discouraged at the same time.\textsuperscript{158}

It is interesting to note that ever since China joined international agreements, it has been criticized by the international community on the issue of human rights. In the 1985 and 1986 sessions of the Commission on Human Rights dealing with the "Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief", the fate of Buddhists in Tibet has become an issue.\textsuperscript{159} Members of the non-governmental organization "International Fellowship of Reconciliation", appointed as special rapporteur on religious freedom, appealed to the Chinese government to modify its policies and administrative practices and to give effect to the Declaration.

In its response the Chinese delegation emphasized that it should be clear that there was no religious repression in China. After the "liberation" of Tibet, because the old feudal system had not been entirely destroyed, religious freedom had not been immediately ensured. Now this has changed. The delegation said it "categorically rejected" the "groundless accusations" which were tantamount to interference in China's internal affairs and raised "serious doubts" about the true intentions of the representatives who had made them.\textsuperscript{160}

A final comment by the present Dalai Lama may be appropriate here:

Buddhism tries to achieve happiness for all human beings. Now, theoretically, Marxism also stands for the majority – the working class.

\textsuperscript{157} The Chinese authorities have closed the major monasteries to the public, policemen prowl around the monasteries and Chinese army trucks patrol the streets of Lhasa, according to foreign visitors. See \textit{FEER}, 10 Dec. 1987.
\textsuperscript{158} Several reports suggest that the authorities again attempted to strengthen control over religion as part of the campaign "Opposing Bourgeois Liberalism", \textit{Xinhua} 1 Mar. 1987; \textit{Xining}, Qinghai provincial service, 8 Mar. 1987; \textit{Zengzhou}, Henan provincial service, 16 Dec. 1986.
\textsuperscript{160} Id.
Yet there is something wrong with its implementation in the present communist states. Their excessively rigid atmosphere actually spoils the value of human life. On the other hand, while individual freedom is necessary, one must have the equal economic opportunity with which to exercise it. So it seems portions of both systems are needed.

The Dalai Lama, in Avedon, *Exile from the Land of Snows*

6.2 Other Legal Developments in Minority Areas

The most substantial change in China since 1979 has been in the economy. The huge unmanageable agricultural communes have been broken up, most arable land has been returned to the farmers themselves, and now high priority is assigned to market forces. Several cities in the minority areas (notably Kashkar, Xinjiang) have re-emerged as vital marketplaces. In Qinghai the reform includes changes in the labor system; there is a call for an "open recruitment" system.

Some areas are using, albeit in a disguised form, the old method of registering names based on people's recommendations, instead of applying the regulations on facing society and practising open recruitment, a thorough examination and selection of those who came out on top. These methods are wrong, [a radio report said].

There are, on the other hand, still many restrictions on private ownership and free enterprise, despite the officially-sanctioned economic reforms. In 1986, the Chinese authorities issued a set of orders which placed limitations on the number of animals Tibetan nomads are permitted to keep. Many Tibetans fear that the Chinese will issue similar orders to restrict the economic freedoms obtained in recent years. One of the more popular policies has been a moratorium on taxes in agricultural and pastoral areas in the Tibetan Autonomous Region beginning in 1984 and continuing possibly until 1990. At the same time, however, Tibetans in the free marketplaces in cities have suffered from high taxes being placed on them to compensate. Many Tibetans are also worried by the fact that the economic development further increases the number of Han-Chinese moving into minority areas. As a result of this,

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161. Avedon, *op.cit.* note 29, 139.
164. Elliot Sperling, *op.cit.* note 73.
165. *Id.*
unemployment has risen and the Chinese have been given the better jobs.\textsuperscript{166} In many areas of economic development Tibetans serve as manual and unskilled workers.

The economic policy has been accompanied by a stress on increasing trade relations with the outside world. This intention underlies the current relaxation in minority policy. As Dorje Cering, Acting Chairman of the Tibetan region, said: "Without totally eliminating leftist ideological influence, it is impossible to open up to the world and make a success of foreign economic relations and trade."\textsuperscript{167} Tibet thereupon invited businessmen from Hong Kong and Macao to run factories and initiate other economic ventures. In February 1986, at the opening of an economic and trade exhibition about Tibet in Hong Kong, Dorje Cering introduced Tibet's "open policy, investment, environment and preferential terms" for cooperative projects and capital import.\textsuperscript{168} Despite its remote location and long supply lines, he said, rich natural sources and special policies have provided Tibet with many favorable conditions to make it attractive for foreign economic and technical cooperation. The special policies he listed included extension of the scope of investment, granting of greater decision-making power, preferential treatment of foreign enterprises, and reduction or exemption from tax. Border trade, in particular, was to be expanded. Joint ventures with foreign firms are now allowed to be set up.\textsuperscript{169} In promoting this open policy, the Panchen Lama has now been found suitable: after having spent twenty years in a Chinese prison, he was allowed to make trips to Australia and Nepal.\textsuperscript{170}

China appealed to other Muslim countries to help in Xinjiang's economic development. Turkey has already signed contracts to build factories in the region, and other Muslim countries, notably Pakistan, are also involved.\textsuperscript{171} Tourism is thought to play a key role in the development of the minority areas' economy; in 1977 Xinjiang had 88 visitors; in 1985, 23,220 foreigners came to this region.\textsuperscript{172} Tibet is concentrating on increasing tourism, as well. In 1987 China earned 20 million US dollars from tourism in Tibet and some 40,000 visitors are believed to have come to this area in that year.\textsuperscript{173} The closing of Tibet to all foreigners, except in groups, following the discovery that foreigners

\textsuperscript{166} Id.
\textsuperscript{167} SWB 11 Apr. 1986.
\textsuperscript{169} SWB 11 Sep. 1985.
\textsuperscript{170} TR Dec. 1986.
\textsuperscript{171} Enders Wimbush, op.cit. note 69, 6.
\textsuperscript{172} SWB 8 Apr. 1986.
\textsuperscript{173} IHT, 9 Oct. 1987.
took part in the anti-Chinese riots, may therefore come at an unfortunate time for the leadership.\footnote{174}{The Chinese authorities claim that about 50 foreigners were directly involved in the riots in Lhasa. See \textit{IHT}, Oct. 1987.}

In many of the minority areas, a relaxation of family planning is allowed. It is within the authority of the regional government to issue specific regulations on family law. In Xinjiang, Inner Mongolia, and presumably Tibet, family planning is not as strictly enforced as in the rest of China: Wang Wei, Minister in charge of the State Family Planning Committee, explained that “one-child family planning is only applied in minority nationality areas with a population exceeding 10 million, but groups with a population of less than 10 million are allowed to have two children per couple, and only in some isolated cases may a couple have three children . . . no couple is permitted to have four children.”\footnote{175}{Xinhua 4 Dec. 1986; SWB 19 Dec. 1986.} In Qinghai, however, where a great number of Tibetans live, the minorities are reported to have to live in strict accordance with the one-child per-family rule.\footnote{176}{1982 Qinghai Temporary Provision on Birth Control (issued by Provincial People’s Government, effective 5 June 1982).} Here the number of births in 1986 was reportedly too high, partly because, in the urban areas, the province had relaxed the rules concerning a second child.\footnote{177}{Xining, Qinghai provincial service, 20 Feb. 1987; SWB 9 Mar. 1987.} To counteract this, the authorities stressed that “it is essential to insist on late marriage and late child-bearing and fewer and better-quality births”. Some sources spoke of the probability that population control measures would also be directed at all minorities in the near future.\footnote{178}{Enders Wimbush, \textit{op.cit.} note 69.}

The enforcement of marriage law, too, varies considerably from one autonomous region to another. In Xinjiang and Inner Mongolia regulations are adapted to local customs.\footnote{179}{See 1980 Xinjiang Uygur Region’s additional regulations governing the enforcement of the Marriage Law of the PRC (promulgated 14 Dec. 1980 at the Xinjiang Uygur Autonomous Regional People’s Congress) and the 1981 Nei Mongol Additional Regulations on the PRC’s Marriage Law (adopted at the 9th session of the Standing Committee of the 5th Regional People’s Congress on 21 Sept. 1981).} An Uigur can have four wives, whereas a Han, in the same area, is only allowed to take one. In Xinjiang, it is, nevertheless, not permitted to marry according to religious ceremonies. This prohibition applies presumably to Muslim and Buddhist minorities alike.
7. Conclusion

On balance, this article may seem to have looked at minority problems too much from the point of view of those minority peoples who wish to enlarge their religious freedom and adhere to traditional customs. It is clear, however, that these minorities represent an important majority of China's non-Han population and it was particularly their obstinate attitude which determined the nature of China's policy towards the minority people in general. Conversely, some of China's past minority policies may have actually contributed to the rise of anti-Chinese sentiment and intensified the minorities' quest for racial identity. For example, the loyalty to the exiled Dalai Lama might not have been as intense and widespread among Tibetans before the Chinese takeover as it appears to be now, almost thirty years after the Dalai Lama had fled the country. It should also be pointed out that while some students of Chinese affairs have tended to view the truth to be somewhere in the middle between the official Chinese and the minority-refugees' points of view, this cannot as yet be convincingly documented by facts available to the general public. In this article I have merely attempted to collect some facts and draw a few obvious, though limited, conclusions; a thorough understanding of Chinese minority policy and of the implementation of the law applicable to minorities would require years of research within China and its autonomous regions.

From the available sources it seems nevertheless clear that neither the increased legal protection of individual rights nor the current relaxation in minority policy are primarily products of sincere concern for the fate of the minority peoples, but rather of China's internal political problems and of its inability to find an effective policy towards minority peoples; its purpose is essentially economic. Greater protection of freedom of religion, for example, is still based on, and limited by, the traditional (atheist) Marxist-Leninist-Mao Zedong ideology. A genuine change can only occur when there are changes on both the practical and the ideological level. Similarly, the reappearance of clauses guaranteeing racial and religious equality in the Constitution does not as yet seem to have brought about fundamental changes in the areas where racial and religious minorities live. The law is still regarded primarily in the orthodox fashion as an instrument of the political leadership, and tends to be used rather inconsistently towards Tibetans, many of whom are perceived to be a potential threat to Chinese control.

Furthermore, the granting of greater "autonomy" expresses a change not so much in the institutional structure as in the style of government. Control over minority areas is kept firmly in the hands of the Communist Party. There appears to be no willingness among Chinese authorities to consider the need or desirability of granting greater political autonomy along ethnic or religious
lines. It is also evident that the large-scale transfer of Han-Chinese into minority areas makes Beijing's promises of more autonomy quite meaningless.

Still, a change has occurred in the way the Chinese leadership thinks the minorities ought to be dealt with: nationality feelings should be used rather than opposed. "Leftism" is currently perceived to be the main obstacle towards the realization of this policy. In practice, "leftism" probably refers to the attitude of officials and cadres who cling to their traditional style of government with all its advantages. This may be the reason for the considerable delay in implementing central policy in minority areas in comparison with the rest of China. The "leftist" way of government has come under attack during the campaign of "governing by law", the launching of which coincided with the shift towards a more moderate minority policy. In pursuing this aim a great number of laws have been enacted. But as this in practice means the removal of a large amount of discretionary power from the hands of cadres, from the local party committees in particular, it will require a major effort. If the Chinese sincerely want to eliminate "leftism" in bureaucracy and in the Party, where it has been dominant for more than thirty years, a major political change on both the central and the local level will be required, not mere passing of new laws.

Nevertheless, the recent legal and political developments offer some grounds for optimism. For it is the first time since the early 1960s (after the Tibetan "uprising" and the Xinjiang "exodus") that legislation and policy have been expressed in such moderate language. An important difference from earlier years is that the current legislative policy tolerates some non-socialist thought and therefore minority customs and beliefs, which in turn, has resulted, particularly in Xinjiang, in greater economic and religious freedom. More laws are said to be drafted to further protect local customs and beliefs. The Chinese leadership is proving itself to be increasingly prepared to discuss its problems openly and to admit publicly past mistakes and the presence of remnants of "leftism" in bureaucracy and the Party. The changes in the legal system may be a legal basis for the liberal minority policy as well as a further encouragement for the local leadership to actually implement it.

Further research on minority issues might be worthwhile, for example on questions as to what is the optimum degree of integration or independence, and what is the best framework for central/regional relations. This may have further relevance now that the Chinese government has ideologically accepted the concept of "one country, two systems". With this in mind, and also with the aim of reducing the tensions along the Sino-Indian border, the Dalai Lama has proposed a plan calling for a zone of peace on the Tibetan

180. In relation with the (possible) reunification of Hong Kong and Taiwan, BR 10 Oct. 1984.
plateau. He hopes that Beijing will consider the advantages of a model similar to India's arrangements with neighboring territories such as Sikkim and Bhutan. Bhutan, for example, controls its internal affairs while ceding foreign relations to New Delhi.

The Chinese leadership has denounced the Dalai Lama's plan as "separatist" and blames the violent events in Tibet entirely on his "antagonistic activities". However, the anti-Chinese resentment in Tibet — and the impact it could have on other minorities — is a fact of life the Chinese leadership will have to come to terms with in the longer term. These problems, even if Beijing allows the return of the Dalai Lama, will not be easily solved. In most minority regions, Tibet and Xinjiang in particular, China's leadership will continue to be faced with a dilemma. Heightened economic consciousness and new expectations generated by the liberalization of policy will inevitably lead to heightened political consciousness and further demands. On the other hand, as the authorities may have learned from previous years, any retreat on the critical issues of religious freedom and autonomy will increase pressure on the PRC's leadership from inside as well as outside the country and therefore hardly provide a long-term answer.

181. Presented in a speech addressing the U.S. Congressional Human Rights Caucus on 21 Sept. 1987. The plan includes: 1) transformation of Tibet into a zone of peace; 2) abandonment of China's population transfer policy; 3) respect for the Tibetan people's rights and democratic freedom; 4) abandonment of China's use of Tibet for the dumping of nuclear waste; 5) earnest negotiations on the future of Tibet. Some senior U.S. Congressional leaders have urged party leader Zhao Ziyang to respond positively to the plan.

182. Negotiations between Beijing and the Dalai Lama have been going on since 1980. The return of the Dalai Lama was the central issue, but, presumably shocked by the reaction of the Tibetan people to the Dalai Lama's delegation of 1979 and 1980, the Chinese made it clear that if the Dalai Lama were to return he would be based in Beijing and only allowed occasional visits to his homeland. The Dalai Lama did not accept this condition and the negotiations seem to have broken down after the riots in Lhasa.