

THE QUEST FOR SELF-RULE IN TIBET

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The case of Tibet stands out as one of the most persistent and difficult human rights problems in the world today. Since the Dalai Lama fled Tibet in 1959, the Tibetan government-in-exile based in Dharamsala, India, and the government of the People's Republic of China (PRC) in Beijing have labored over this problem with no satisfactory result. Though the Chinese government has imposed its own version of "autonomy" under its national-minority policy, this version has achieved very little of what it promises. The Tibetan position has evolved from cries for independence in the early years of exile to calls for "genuine autonomy" today. The hope is that autonomy will promote the conditions necessary for participation in cultural, social, economic, and political life, promoting both democracy and human rights in Tibet.

China can best meet its acknowledged obligations to the Tibetan people by shifting away from its current application of the national-minority policy to a more flexible approach that opens the door to genuine negotiations. Practically, this move is already available under Article 31 of the PRC's 1982 Constitution, which is now being applied in Hong Kong. Article 31 says that "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress [or NPC, China's legislature] in the light of the specific conditions."

Article 31's provision for the creation of "special administrative regions" allows a more tailored response to special cases than does the alternative national-minority approach now taken. There is no need, of

course, for policy toward Tibet mechanically to imitate the Hong Kong arrangement (which has problems of its own in any case). Rather, the idea is that China should take a suppler approach—of the sort for which Article 31 provides—in order to respond to the special circumstances of the distinctive Tibetan nationality. Such a flexible approach is essential if there is to be any hope for a negotiated solution.

The Tibet problem has attracted renewed interest as Chinese officials and the Dalai Lama's representatives have engaged in six rounds of talks beginning in 2002. As a measure of their sincerity, exiled Tibetan leaders have urged their fellow exiles to show greater restraint in order to foster a "cordial atmosphere" for these discussions. Though both the Dalai Lama and Chinese officials report little progress, both sides appear to have appreciated the opportunity for dialogue.¹ If nothing else, these talks have confirmed each side's bottom-line objective: For the Tibetans it is "genuine autonomy," while for China it is the PRC's "sovereignty" over Tibet. With political will, these objectives are ultimately reconcilable. The Tibetan leaders have advanced a "middle-way" approach that seeks genuine autonomy but abandons earlier calls for sovereign independence.² The Chinese have responded with insistence on their existing national-minority policies, taking comfort in China's actual control of Tibet as a *fait accompli* as well as the international recognition that this state of affairs has achieved. These policies incorporate a form of top-down Chinese Communist Party (CCP) rule that makes genuine local autonomy difficult to achieve. For China, the assertion of its sovereignty over Tibet is a matter of vital national interest. Beijing shows little concern for the difficulties that the Tibetans face in negotiating with such a powerful adversary.

A legacy of mistrust persists. Beginning in mid-2006 after the fifth meeting, Chinese officials put the discussions on hold for more than a year, offering increased criticism of the Dalai Lama. Some attribute this sudden chill to events in Tibet that tended to demonstrate continued strong popular support for the Dalai Lama. The signs of support included widespread popular adherence among Tibetans to the Dalai Lama's call for the protection of certain endangered species; the destruction by Tibetan monks at Gandan Monastery of a statue of the protective spirit Shugden, whose worship the Dalai Lama has discouraged; and the appearance of ten-thousand pilgrims at the Kumbum Monastery in the historic eastern-Tibetan province of Amdo, where it had been falsely rumored that the Dalai Lama would pay a visit.³ Robert Barnett suggests that subtle resistance to Chinese rule has even spread to the PRC's own ethnic-Tibetan cadres, and that mutual distrust has mounted to the point where Chinese leaders sometimes doubt the loyalty of China's local ethnic-Tibetan officials.⁴

Chinese officials view Tibetans' loyalty to the Dalai Lama as a threat, but Beijing should also stop to ponder what this devotion suggests about

the Dalai Lama's ability to marshal impressive popular support for an agreement. Speaking from India, Tibetan-exile activists such as Lobsang Yeshe, the vice-president of the pro-independence Tibetan Youth Congress, and Tenzin Tsundue, a prominent social activist, showed sup-

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port for the Dalai Lama's efforts despite their own skepticism regarding the sincerity with which the PRC approaches autonomy discussions. Yeshe complains that Tibetans are allowed "talks about talks," but when they finally explain their position the PRC condemns them. As Karma Chopel, who chairs the legislative assembly of the Tibetan government-in-exile, has noted, skepticism about progress has grown within his own Assembly of Tibetan People's Deputies. Rato Ngawang, a former "Mustang" resistance fighter trained by the CIA and now a "middle-way" supporter, even wonders whether

any agreement will have to wait until democracy replaces communism in China. The Dalai Lama may be the only person able to bridge these gaps and unite this weary community. At the same time, he offers the Chinese a rather agreeable negotiating partner. Many Chinese officials, nevertheless, appear to favor waiting until the 72-year-old Dalai Lama dies to "solve" the Tibet problem.

One cannot fully grasp the concerns of both sides without considering basic demographics. To begin with, there is the vast population disparity between the roughly 5.5 million Tibetans and the almost 1.2-billion-strong Han Chinese. (Tibetans who live in exile, mostly in India, number only about 130,000.) This problem is common to all 55 national minorities within the PRC, since together they make up just 8 percent of the overall population while the remaining 92 percent is Han. Taken together, the 13 geographical districts that the PRC has designated as Tibetan autonomous areas nearly approximate what Tibetans consider greater Tibet, and encompass about a quarter of the PRC's total land area. Demographic data regarding these Tibetan areas is disputed, as Tibetans in exile worry that China intends eventually to swamp the whole area with Han migrants. Official PRC census figures from 2000 (the most recent available) place the Han Chinese population in Tibetan areas at about 1.5 million. The Chinese figures for only the Tibet Autonomous Region (TAR)—the largest and westernmost of all the designated Tibetan areas—claim approximately 2.5 million Tibetans and 160,000 Han Chinese. Scholars sometimes fault the Chinese census data for leaving out significant numbers of those residing temporarily in Tibet, including soldiers from the People's Liberation Army and unregistered

Han traders and workers. Chinese policies to encourage Han Chinese to “go west” to minority regions are seen as reflecting Beijing’s desire to dominate the urban sector and assimilate Tibetans. Some conclude that the Chinese already form majorities in larger cities such as Lhasa and Xigaze.⁵

China’s existing policies, enacted under Article 4 of the PRC Constitution and the related national-minority laws, have failed to provide Tibetans with ultimate control over their own affairs, leaving the Tibetan community beleaguered and repressed. Since I take seriously both sides’ expressed interest in internal autonomy rather than independence, I will leave the issue of independence aside. The historic Chinese rejection of the more flexible approach to autonomy available under Article 31 is unjustified and fails to appreciate both the history of China’s centuries-long relationship with Tibet and the gravity of the PRC’s international obligations. The choice of this alternative could open the door to genuine and enduring solutions to this long-festering problem. Although Article 31 was framed with the Taiwan question in mind, the provision’s simple language has allowed its use in other situations such as those of Hong Kong and Macau.

Tibet Under Chinese Rule

China’s national-minority autonomy policies are promulgated in their current form in the 1982 PRC Constitution and in the Law on Regional Nationality Autonomy (LRNA) passed in 1984, and revised in 2001. In contrast to Article 31’s broad provision for “special administrative regions,” Article 4 and its associated laws have served as the basis for substantial intrusions of central control and the national political system into local affairs. According to Article 4, “[r]egional autonomy is practiced in areas where people of minority nationalities live in concentrated communities.” Article 15 of the LRNA provides that such autonomy must be exercised “under the unified leadership of the State Council and shall be subordinate to it.” The slicing-up of the vast contiguous Tibetan territories into a congeries of “autonomous” districts suggests that a divide-and-rule strategy is at work as well. Overall, Beijing’s policies regarding minorities appear to aim more at ensuring the center’s control over border and minority regions than at securing autonomy for the indigenous peoples who live in such places. The LRNA provides for protection of minority concerns in the areas of language, education, political representation, administrative appointments, local economic and financial policies, and the use of local natural resources, but there are real questions as to how effectively minorities can exercise the powers that the law gives them.

Various requirements of central approval for legislation, as well as the vigorous application of a national system of “democratic centralism”

under CCP leadership, make minority regions' lawmaking autonomy less than that afforded ordinary Han regions, and indeed largely illusory. Article 116 of the 1982 Constitution provides for local enactment of "regulations on the exercise of autonomy and other separate regulations in light of the political, economic and cultural characteristics" of such nationalities. The LRNA's Article 19 appears to envision that each autonomous area is to determine its own exercise of autonomy by enacting a basic law on the subject. The catch is that the Standing Committee of the NPC in Beijing must approve any such law. For none of the PRC's five autonomous regions (which include not only Tibet but also Xinjiang, Inner Mongolia, Guangxi, and Ningxia) has any such approval ever been forthcoming. The single attempt at enacting a basic law on regional autonomy for the TAR went through fifteen rejected drafts before being abandoned.⁶ Lower-level autonomous areas such as prefectures and counties have obtained approval for their basic autonomy laws from the next higher organ, but these laws are more or less just copies of the LRNA. Many other regulations have been enacted, but these laws (like all laws in the PRC) must win the approval of various CCP committees and do not depart in any significant way from national laws or practice. The upshot of these tight approval processes and Party control is that minority areas enjoy very little legislative autonomy.

China's minority policy in Tibet further rests on fictions such as the notion that the PRC's 1950 armed invasion and subsequent occupation of the region were acts of "liberation" that brought about "democratic reform" in the shape of CCP rule. According to Beijing's Marxist logic, colonialism can only be a product of capitalism and hence could not have been committed by the PRC. Under this theory, the exploited classes of Tibet would be joined with other Chinese in a common program of local autonomous rule. This "common program" saw the autonomy arrangement as merely a step on the way to the assimilation of minorities into the dominant Han Chinese state. For instance, although the seventeen-point agreement which China largely forced upon the Tibetan government after the PLA invasion promised that Beijing "would not alter the existing political system in Tibet," China clearly envisioned that—and behaved as if—the liberated Tibetans would soon favor "reform," meaning the CCP's vision of minority autonomy.

Over the years, China eliminated all of Tibet's traditionally theocratic political institutions. By the PRC's own subsequent admission, the decade-long Cultural Revolution that Chairman Mao Zedong launched in 1966 was a time of particularly harsh "class struggle" and massive cultural destruction. A contrite and all-too-brief period of liberalization in the early 1980s gave way to greater repression and even martial law later in that decade. By decade's end, limits on the number of ethnic-Han officials sent to Tibetan areas had given way to the encouragement of Han migration to such regions. Since the late 1990s, Beijing has

joined crackdowns on political support for the Dalai Lama with a stress on economic development and continued promotion of Han population movement.⁷ Yet China's massive economic investments have done little to assuage Tibetans' concerns. Only those Tibetans willing to collaborate with Chinese rule have been given some role in the Chinese structure of regional control. The CCP still dominates within Tibet, as do the Han Chinese within the Party's local leadership cadres.

China's military occupation and CCP rule have spawned a cycle of resistance and further repression. Repression over the years has meant not only armed invasion and crackdowns but also the sacking and razing of Buddhist monasteries during the Cultural Revolution, the suppression of religion, the imprisonment and coerced "reeducation" of dissidents, as well as the forced relocation of rural dwellers to less remote and more urbanized areas. Tibetan resistance has occasionally involved open popular dissent and rebellion, but more often has been a matter of smaller-scale resistance by monks, nuns, and others against Chinese rule and its methods. While Chinese authorities generally blame the occasional disturbances on liberalizing policies, a more accurate account would point to Chinese repression and distrust of Tibetans.

Reports on Tibet have painted contrasting pictures. In May 2004, the PRC State Council's Information Office published a white paper on "Regional Ethnic Autonomy in Tibet" that highlights a number of favorable statistics, including promising figures regarding Tibetan participation in local government. The report points to a 93 percent turnout rate for county-level elections. The share of Tibetan and other ethnic-minority deputies exceeds 80 percent at both the regional and city levels. The report notes further that, in keeping with the LRNA, Tibetans fill all the top posts and most of the ordinary slots in various governing bodies. Of the nineteen deputies that the TAR currently sends to the NPC, twelve are Tibetan.

The Information Office claims full Tibetan participation in local regional and cultural development. According to the white paper, the Tibetan language is taught in the schools and widely used along with Mandarin Chinese. The report notes the presence of 46,000 Buddhist monks and nuns in Tibet as well as the restoration of religious sites and what it claims to be the wide latitude and even support given to religion in Tibetan areas. The paper's authors go so far as to highlight the PRC's official involvement in the process of determining succession to key titles within the world of Tibetan Buddhism. Yet the authors fail to mention that the eleventh Panchen Lama (then a six-year-old boy) was "disappeared" not long after being designated by the Dalai Lama in 1995—or that a PRC designee has been held up as the Panchen Lama since then. Nor does the report relate how the seventeenth Karmapa Lama, a young man brought up in Tibet under Chinese-government supervision, has fled to India.

Outside reports, while acknowledging some favorable statistics, show at the same time that local autonomy is lacking where it counts most. In 1997, the International Commission of Jurists (ICJ) noted that while “Tibetans are in positions of nominal authority, they are often shadowed by more powerful Chinese officials” and “every local organ is shadowed by a CCP committee or ‘leading group.’”⁸ The ICJ also worried about economic development, women’s rights, and limits on religious freedom, particularly a CCP rule barring Party members from practicing Tibetan Buddhism. Tibet’s low level of economic development relative to other regions of China can also hardly be good for local autonomy.

A 2006 joint study by the Minority Rights Group International and Human Rights in China does the fullest job to date of describing the PRC’s autonomy deficit.⁹ “Ethnic identity,” the authors observe, “is an additional, but not the only, obstacle to participation in a non-democratic regime.” Their report goes on to criticize Beijing’s continuing failure to approve regional basic-autonomy legislation as well as the CCP’s tight central control over national-minority lawmaking generally. High levels of minority participation in government may not translate into real power: In each of the PRC’s five “autonomous regions,” the top CCP official is a Han Chinese male, and minority-group members in high office typically have Han deputies who do the real policy making alongside the local Party leadership. In society at large, minority-group members suffer severe restrictions on their freedoms to speak and associate. Of 2,279 cases in the Political Prisoner Database of the U.S. Congressional Executive Commission on China, 2,085 involve ethnic-minority prisoners. Of these, 449 are ethnic women, including a significant number of Tibetan nuns.

Another Way Under the Chinese Constitution

The current approach is a failure that serves neither China’s interests nor the Tibetan people’s needs. China’s policies toward Tibet have failed to match its traditional obligations, reflected in centuries of distinctive Sino-Tibetan relations, and have likewise failed to meet its minimum international responsibilities to an autonomous national community. It is time for China to craft an approach that fully recognizes Tibet as a distinctive and valued national community within the PRC. The most realistic outline of such a path may be found in Article 31.

The most comparable application of this “special administrative region” model to date has come in the case of Hong Kong since sovereignty there was handed back to China by Great Britain in 1997. The security locally of human rights and the rule of law has allowed Hong Kong people the kind of voice contemplated by some notion of genuine autonomy—though Beijing’s failure to keep all the democratic promises

that it has made to Hong Kong casts doubt upon China's comprehension of (or possibly its seriousness about) its democratic commitments. Article 31, nevertheless, points to a far better path toward resolving the Tibet issue than does Article 4. Article 31 liberally allows the "state to establish a special administrative region when necessary" and permits the system of governance in such a region to be "prescribed by law. . . in light of specific conditions." There is nothing on the face of the PRC Constitution that bars application of the Article 31 approach to Tibet. Yet sadly, China's 2004 white paper distinguishes Tibet from other Article 31 cases on the grounds of its having always been an "inseparable part of China" plus a lack of imperialist contestation over sovereignty. As the PRC's white paper concludes:

The situation in Tibet is entirely different from that in Hong Kong and Macao. The Hong Kong and Macao issue was a product of imperialist aggression against China; it was an issue of China's resumption of exercise of its sovereignty. Since ancient times Tibet has been an inseparable part of Chinese territory, where the Central Government has always exercised effective sovereign jurisdiction over the region. So the issue of resuming exercise of sovereignty does not exist. With the peaceful liberation of Tibet in 1951, Tibet had fundamentally extricated itself from the fetters of imperialism. Later, through the Democratic Reform, the abolition of the feudal serfdom under theocracy and the establishment of the Tibet Autonomous Region, the socialist system has been steadily consolidated. . . . So the possibility of implementing another social system does not exist either. . . . Any act aimed at undermining and changing the regional ethnic autonomy in Tibet is in violation of the Constitution and law.

With this statement, China grounds its refusal to embrace the more flexible Article 31 approach in history and the prerogatives of sovereignty. Yet a fair analysis of the distinctive Sino-Tibetan historical relationship and international practice suggests a more flexible and constructive Chinese approach to the Tibetan problem.

Autonomy arrangements are rarely written on a clean slate. The disputants' historical relationship and level of mutual trust surely affect their expectations. Discussions with Chinese officials and Tibetan exiles reveal little agreement over how to interpret their shared past. It is clear that Chinese efforts at imperial conquest have met with Tibetan resistance for nearly a thousand years. It is doubtful that the long historical record offers compelling support for Chinese sovereignty claims. In spite of this, Chinese officials stress history in justifying their claims to rule Tibet and accuse their critics of not understanding history. For this reason it is important to offer a brief sketch of the historical Sino-Tibetan relationship.

Given that Tibet was itself a rival imperial power up to at least 822 C.E., the time of China's Tang Dynasty (618–907), present-day Chinese accounts usually date China's claimed incorporation of Tibet to

the Mongol-ruled Yuan Dynasty (1270–1368). The Tibetan abbot Sakya Pandita is reported to have subordinated Tibet to the emerging Mongol Empire in 1247. The Mongols then invaded and established a degree of control in 1267. It was only in 1270 that the Mongol ruler Kublai

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Khan proclaimed the Yuan Dynasty in China, and even then China was administered separately from Tibet. Given this sequence of events, Tibet might be seen as belonging as much to the conquering as the conquered camp. Warren Smith describes a cautious official relationship from the Yuan Dynasty forward, involving frequent Chinese attempts at subordination and Tibetan resistance.¹⁰ Leading

Tibetan lamas often served as religious advisors to China's emperors—thereby forming what the Tibetans called a *cho-yon* or patron-priest relationship—with the lamas enjoying free rein in Tibet. This state of affairs persisted during the Ming Dynasty (1368–1644). The Ming court appeared to value the Tibetan religious leaders less for any spiritual role than as intermediaries who could help China to deal with the still threatening Mongols.

When Ming rule collapsed and the Manchu-dominated Qing Dynasty (1644–1911) acceded to power, imperial China's intervention in Tibet rose to a higher level still. Even so, Pamela Crossley characterizes the Qing connection with Tibet as a loose imperial association featuring indirect rule through Tibetan monastic leaders.¹¹ Qing authorities did occupy Tibet for a brief time and off and on after 1720, but by the nineteenth century the influence of a weakened Qing Dynasty over its “exterior empire” in Tibet had begun to wane.

From 1911 until the Communist invasion in 1950, Tibet enjoyed de facto independence. In negotiations with Tibet and British India, Chinese officials began to articulate in modern state terms the character of their claims to Tibet, generally acknowledging a special status and indirect rule. The reluctance of the British—concerned about their own imperial claims in India—to recognize more independence than a state of Chinese “suzerainty” appeared to be the only thing that held the Tibetans back. In 1913 negotiations at Simla, India, the British advanced a notion—similar to one that China and Russia had framed to deal with Mongolia—of an inner and outer Tibet, suggesting that central and western Tibet could remain largely independent under nominal Chinese “suzerainty” while eastern Tibet would fall under Chinese “sovereignty.”¹² The Simla talks, as well as one-to-one dealings between China and Tibet in the 1930s, saw the former acknowledge the latter's right to a high degree of autonomy.

The early twentieth century also witnessed significant Tibetan mod-

ernization. Melvyn Goldstein notes that Tibetan serfs were not as economically downtrodden as China often portrays. Tibet's political institutions began to show more self-governance capacity. Tibet had had a council or cabinet called the Kashag since the Qing Dynasty introduced one in the eighteenth century. In the 1860s, Tibetans themselves added a national assembly (or Tshongdu) in which sat representatives from the Lhasa monasteries as well as secular officials.¹³ These institutions would endure into the early days of the PRC occupation. The promise of these nascent constitutional developments has been realized among exiled Tibetans, who have founded a liberal democracy complete with a written constitution, universal suffrage extended across the exile community, a cabinet and directly elected prime minister, a Supreme Justice Commission, and an elected Assembly of Tibetan People's Deputies.¹⁴ Similar democratic designs, including the Dalai Lama's commitment to withdraw from temporal rule, have been embodied in current autonomy proposals advanced by the exile government.¹⁵

In a weak position vis-à-vis the new PRC and with little international support, the Dalai Lama in early 1951 essentially faced an "offer he could not refuse" to join the PRC. In May of that year, he accepted a seventeen-point agreement on "measures for the peaceful liberation of Tibet." The PRC claimed to be "liberating" Tibet, presumably from foreign influences such as British India. The seventeen-point agreement, the only one that the PRC has ever made with any of its designated 55 national minorities, clearly acknowledges Tibet's distinctive historical status.¹⁶ The agreement promised Tibetan autonomy and local self-rule under Tibet's established system of governance. Chinese "reforms" that undermined Chinese commitments, followed by popular rebellion, triggered the Dalai Lama's flight to India in 1959.¹⁷ With the Dalai Lama gone, China in March 1959 dismissed the local government of Tibet and began formally exercising direct rule, thereby including Tibet in the same category as the 54 other officially recognized "national minorities."

International Practice

International law and practice alike can powerfully underwrite the idea of a more flexible approach. International law usually distinguishes between an external right of self-determination that includes the right of secession and an internal right grounded in minority rights to democratic self-governance within a sovereign state. Pondering a case related to the question of Quebec's possible secession from Canada, that country's Supreme Court concluded in 1998:

The international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where

a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic or social or cultural development.¹⁸

The Tibetan leadership in exile has argued that Tibet meets these criteria, citing the three resolutions (dating from 1959, 1961, and 1965, respectively) on Tibet that the UN General Assembly passed after the Dalai Lama's flight to India. This argument was grounded in the four decades of *de facto* independence that Tibet enjoyed between the end of the Qing Dynasty and the PRC invasion.

Tibetans now must contend with five decades of Chinese occupation and direct rule of Tibet. Beijing sees continued control over Tibet as a matter of vital national interest. Under such circumstances, *fait accompli* has combined with *realpolitik* to deny Tibetans any hope of independence. Given all this, is there any international legal security for the internal autonomy that the Tibetans now seek?

While guarantees of autonomy have generally not been well secured by international law, it may be argued that under at least two circumstances autonomy in effect becomes internationalized: 1) when it is the consequence of treaty arrangements transferring or surrendering sovereignty, or 2) when it arises out of the denial of rights of self-determination. The Tibet case may implicate both possibilities. Beside the UN resolutions already noted, there has been steady foreign pressure on Beijing since the 1950s to live up to the commitments that it has made to Tibetan autonomy. Given the historical circumstances, such solicitude appears justified and legitimate.

For a distinct national group, at least one that may fit into one of these two categories, autonomy offers an avenue to group security short of seeking full independence. For a government that incorporates such a national group within its sovereign boundaries, international legal security for internal autonomy in the context of democratic guarantees may allow the country to regularize such an autonomy arrangement short of either assimilation or secession. For the local nationality group, international legal and diplomatic support may help to make the internal-autonomy arrangement more lasting and reliable. At the same time, such international involvement serves as a check on what is for most countries the worrisome prospect of secession.

A roughly satisfactory, internationally supported autonomy arrangement may go a long way toward reducing the chance that autonomy will become a step toward independence, a risk that weighs heavily on Beijing's mind when it thinks about Tibet. There can be little doubt that the international treaty and the solicitude that has attached to the Hong Kong arrangement have rendered that arrangement more reliable (albeit still not perfect) for all concerned. Similar international solicitude, if acknowledged in the Tibet case, could help China to regularize and

achieve full international support for a distinctive Tibetan-autonomy policy. Current expressions of recognition of China's claims to Tibet are generally thought to depend on the sheer weight that China can throw around in world affairs. An autonomy arrangement with a level of democracy and human rights acceptable to the Dalai Lama and the government-in-exile may encourage more genuine local and international satisfaction with Chinese sovereignty in Tibet.

Genuine Autonomy Under Article 31

In an August 2006 interview, government-in-exile prime minister Samdhong Rinpoche said that the Dalai Lama's representatives, aware of Beijing's objections to the use of Article 31, have in talks with China stressed instead Article 4 and the various laws governing national minorities. The Tibetans note that the Chinese government is in fact not meeting its own autonomy standards for national minorities, as laid out in the PRC's own basic law. In an August 2006 interview, Chinese official Liu Hongji, who works for the Tibetology Research Center in Beijing, appeared to reject Tibetans' efforts to put their case under Article 4 as well, arguing that the contents of the "middle-way" approach offered by Tibetan representatives are "tantamount to not recognizing the Central Government, not recognizing ethnic autonomy, and not recognizing the socialist system." Liu stresses the PRC's demands that the Dalai Lama must 1) recognize Tibet as part of China; 2) recognize Taiwan as a Chinese province; 3) give up all activities toward independence; and 4) recognize the leadership of the CCP. Are all paths to genuine discussion blocked?

The May 2004 white paper's assertion that resumed sovereignty is a precondition for the application of Article 31 is not supported by the text of Article 31 itself. Further, it is not evident that Taiwan, to which Article 31 clearly applies by design, would meet such a requirement since the Taiwan case involves the claims of another group that Beijing alleges to be purely domestic to China (the PRC has long insisted that Taiwan is nothing more than a "renegade province" of China).

Even if a dispute as to sovereignty is required in order for Article 31 to apply, the white paper raises precisely that issue in speaking of Tibet being extricated from the "fetters of imperialism." It seems obvious that the Article 31 route to resolving this long-festering problem offers a flexible and realistic option for a government truly committed to resolving this issue. China's objection to a flexible negotiated solution appears to be a question of policy, not law. It is significant that under Section 13 of the Constitution's Article 62, the National People's Congress has the power "to decide on the establishment of special administrative regions and the systems to be instituted there."

If this categorical question could be solved, then the discussions

might move on to the more serious question concerning the form of democratic institutions to be employed. Beijing's chief concern about genuine autonomy is a fear that true democracy in Tibet may open the way to secession or subversion. Hong Kong, however, enjoys considerable freedom and organized political parties that compete in elections, yet no secessionist or subversive forces have emerged there. And in any case, international practice certainly affords effective norms for dealing with actual subversion.

It is important to consider what kinds of democratic institutional arrangements may best diminish the risks that China fears. Chinese scholar Wang Li Xiong has suggested that Beijing's considerable anxieties might be best allayed by some form of indirect democracy. While providing genuine choice at the local level, his model would employ a structure somewhat like the people's congress system, a pyramid structure where locally elected assemblies elect representatives to the next higher prefectural or regional level.¹⁹ Wang argues that the Chinese government will be reassured only if the Dalai Lama's liberal-democratic plan can be modified to make the separation of Tibet from China impossible. Wang believes that shifting the main focus of political competition down toward the local level will have a moderating effect. This is just one example of more serious issues for the discussion that has so far been deferred. As long as democratic rights are protected, this option and others can be subjects of negotiation.

Chinese officials have let the talks languish while accusing the Dalai Lama and his supporters of "splittist" activities.²⁰ Phuntso Wangye, who is now retired but who was a leading Tibetan Communist (he reportedly helped to lead Chinese troops into his homeland in the 1950s and then served as the Chinese official translator in negotiations with the Dalai Lama in 1954), has done something rare indeed by voicing dissent from within Chinese officialdom. In three letters to Chinese president Hu Jintao, Phuntso Wangye has argued that the PRC's "Tibet hawks" have thriven on their opposition to the Dalai Lama's return:

They make a living, are promoted and become rich by opposing splittism. . . . If the Dalai Lama and the central government reconcile, these people will be in a state of trepidation, feel nervous and could lose their jobs. . . . Any notion of delaying the problem until after the 14th Dalai Lama dies a natural death is not only naïve, it is also unwise and especially tactically wrong [since it might radicalize young Tibetans].²¹

He then argues that China's objective of a harmonious society would be advanced by welcoming the Dalai Lama and thousands of Tibetan exiles home. Might a flexible policy that genuinely respects Tibetan autonomy and recognizes Tibet's status as a distinctive nationality offer a better path to resolution of this issue than the hawkish approach that Beijing has taken so far?

NOTES

1. Research for this article included interviews in August 2006 with Chinese, Indian, and exiled Tibetan officials and commentators (including the Dalai Lama) who are involved with the Tibet issue. See also Lodi Gyaltsen Gyari, *Seeking Unity Through Equality: The Current Status of Discussions Between His Holiness the Dalai Lama and the Government of the People's Republic of China* (Washington, D.C.: Brookings Institution, 2006).

2. The Dalai Lama has amended his position several times since the late 1980s in order to reassure the Chinese that he is not seeking independence nor imposing any conditions for discussions. See "Autonomy and the Tibetan Perspective" at www.tpprc.org.

3. Warren W. Smith, *China's Tibet: Autonomy or Assimilation?* (Boulder, Colo.: Rowman and Littlefield, 2007), 219–20.

4. Robert Barnett, "Beyond the Collaborator-Martyr Model: Strategies of Compliance, Opportunism, and Opposition Within Tibet," in Barry Sautman and June Teufel Dreyer, eds., *Contemporary Tibet: Politics, Development and Society in a Disputed Region* (London: M.E. Sharpe, 2006), 25–66.

5. See *Tabulations on Nationalities of 2000 Population Census of China* (Beijing: Nationalities Publishing House, 2003); June Teufel Dreyer, "Economic Development in Tibet Under the People's Republic of China," in Sautman and Dreyer, eds., *Contemporary Tibet*, 139n4. Tibetan fears of being swamped can be appreciated when one considers what has happened in Xinjiang, where the population ratio is now 40 percent Han to 45 percent Uyghur; and Inner Mongolia, which is now 80 percent Han and just 17 percent Mongol.

6. Yash Ghai, "China's Constitutional and Legal Framework for Autonomy, Limitations and Possibilities for Negotiations," draft paper, 18 June 2005, 19. (Available from author.)

7. Warren W. Smith, "China's Policy on Tibetan Autonomy," East-West Center Washington Working Papers, No. 2, October 2004.

8. *Tibet: Human Rights and the Rule of Law* (Geneva: International Commission of Jurists, 1997), 14–21.

9. Human Rights in China, *China: Exclusion, Marginalization and Rising Tension* (Minority Rights Group International, 2007), <http://hrichina.org/public/pdfs/mrg-hric.China.Report.pdf>.

10. Warren W. Smith, Jr., *Tibetan Nation: A History of Tibetan Nationalism and Sino-Tibetan Relations* (Boulder, Colo.: Westview, 1996); and Christopher I. Beckwith, *The Tibetan Empire in Central Asia* (Princeton: Princeton University Press, 1987).

11. Pamela Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 1999), 327–36.

12. All parties initialed the Simla Convention, but the Chinese later refused to ratify it out of discontent with the boundary line between inner and outer Tibet. See Melvyn C. Goldstein, *A History of Modern Tibet, 1913–1951* (Berkeley: University of California Press, 1989), 68–80, 832–41.

13. Goldstein, *History of Modern Tibet*, 5, 10–31.

14. Lobsang Sangay, "Tibet: Exiles Journey," *Journal of Democracy* 14 (October 2003): 119–30.

15. See, for instance, statements from the Tibetan government-in-exile's Department of Information and International Relations including "Guidelines for Future Tibet's Polity and the Basic Features of the Constitution," 26 February 1992; and "The Middle-way Approach, A Framework for Resolving the Issue of Tibet," 2006.

16. Contemporary Chinese officials acknowledge Tibet's unique status, speaking of the "four uniques," which include region, culture, significance, and treatment. Barry Sautman, "Resolving the Tibet Problem: Problems and Prospects," *Journal of Contemporary China* 11 (February 2002): 103. In my 9 August 2006 interview with the Dalai Lama, he told me that when he met PRC premier Chou Enlai in Delhi in 1956, Chou indicated that China considered Tibet a special case.

17. Dalai Lama, *Freedom in Exile, The Autobiography of the Dalai Lama* (New York: HarperCollins, 1991), 64, 136; Goldstein, *History of Modern Tibet*, 759–72, 798–803.

18. Supreme Court of Canada, *Reference re Secession of Quebec*, (1998) 161 DLR (4th) 385, para. 135.

19. Li Xiong Wang, "Indirect Representation vs. a Democratic System: Relative Advantages for Resolving the Tibet Dispute," in Sautman and Dreyer, eds., *Contemporary Tibet*, 107–28.

20. See the China Tibet Information Center's "On the 'Middle Way' of the Dalai Lama," at http://en.tibet.cn/news/tin/t20060718_134212.htm.

21. Benjamin Kang Lim, "Tibetan Says Hawks Blocking Dalai Lama's Return," *Reuters*, Beijing, 7 March 2007. At least one PRC official who was interviewed for this article made the same charge against the Tibetan government in Dharamsala. "They eat political rice," said Liu Hongji of Beijing's Tibetology Research Center on 25 August 2006.

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