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## Legal Structures for Special Treatment of Minorities in the People's Republic of China

Arthur Rosett\*

This Article describes and speculates a bit on the legal dimensions of a fascinating social phenomenon reported in the Chinese press. Recent press reports tell of up to five million applications by Chinese to change their personal status from majority (Han) to minority.<sup>1</sup> Information on this phenomenon is incomplete, although several knowledgeable persons have confirmed to me in personal conversations that these changes in personal status are common. This may indicate a broad movement to reclaim minority identity in China, in significant part motivated by the desire to enjoy the legal benefits now associated with minority status. The growth in the numbers of persons who are reported to claim minority nationality status and invigorated development of minority political, cultural, and economic organizations indicate a remarkable reclamation of minority group identity in the People's Republic of China.

The past decade has been marked by substantial governmental efforts in China to correct the sins of the preceding generation. The consequences of these new legal and political policies are just becoming visible through the mist that covers this and many other topics in China. The long-term significance of these changes, which are closely associated with legal changes in the status of minority groups and individuals, remains uncertain, but there does appear to be a link between the emphasis on minority policy as a legal policy and the amelioration of the universally troubled path of relations between groups in multi-ethnic China. These connections suggest both positive and negative aspects of current governmental policies favoring members of minority groups.

This Article will summarize the influences that have produced the contemporary legal structures defining the group and personal

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1 Curiously, I have been able to locate the story in the English language press, but I cannot find a parallel story in the Chinese language press. See *Five Million Seek Nationality Change*, China Daily, July 27, 1990, at 3. Essentially the same story was carried in *Five Million Seek New Ethnic Identity*, BEIJING REV., Aug. 27-Sept. 2, 1990, at 10-11.

status of the more than ninety million persons who hold minority nationality membership in the People's Republic of China. I will describe some affirmative programs designed by the national government to support and assist these groups. The data is limited and the analysis and conclusions are intended to be suggestive, not definitive. China is a closed society and the information available to foreigners always is restricted. Much of what is described here occurs in remote regions beyond the view of outsiders. The situation is vast in terms of the number of people involved, the variety of groups, and the geographic diversity of the nation. There is substantial variation in the situations of different minority groups, and I need not mention that not all groups have been treated beneficently. Recent history records the cruel repression of more than five million Tibetans, and riots in 1990 testify to the unrest of the Muslim groups of Xinjiang.

China is not a free country for anyone, and repressive treatment of minorities is difficult to separate from authoritarian suppression of everyone who is different or dissident in any sense. The changes that will be reported are recent and contrast sharply with the very different situation that existed in the recent past. Some of these changes are already producing visible reactions that may undercut the permanence of the changes.

Two other cautions demand early mention. First of all, in most of the world, statements of national minority policy are aspirational rather than descriptive. As United States citizens, we may recite with sincerity: "one nation, indivisible under God, with liberty and justice for all"—but it would be a mistake to confuse this with a statement of the norm or with a statement of the current reality throughout our own society. The same is true of national minority policy in China.

In addition to its notable aspirational quality, some features of Chinese law are heavily influenced by another factor, namely the strength of the commitment to the principle of legality within the particular agencies to which their administration is assigned. As we will see, key parts of the process by which a group is legally recognized as a national minority are committed to agencies that see this question very much as a political question, as opposed to a technical or legal question. Moreover, the process by which an individual establishes minority status is part of the household registration system administered by the agencies of public security that have a reputation for not being very legalistic, even by Chinese standards. The work of these agencies is treated within China as

being more confidential than other parts of government, and information regarding their regulations and practices is very limited.

### I. THE CHINESE SITUATION

The universal tensions that shape national policy and practice in the treatment of ethnic minorities throughout the world are presented in China in particularly dramatic form. Most nations can look back on a sorry history of their relations with ethnic and national minorities; China is no exception. As elsewhere, its history is marked by oscillations—tolerance, absorption of foreign ways, and benign support, on the one hand, and repressive cruelty and extermination on the other.

More than ninety percent of the 1.1 billion Chinese identify with the Han group, which forms the core of the Chinese population and culture.<sup>2</sup> Yet that apparent homogeneity has always been offset by the presence of large numbers of indigenous people and other outside groups with distinct linguistic, cultural, and genetic heritages. Throughout its long history, China has been a pluralistic society. June Dreyer cites a study of half a century ago that found more than eight thousand separate groups mentioned in Chinese literature over a period of almost three thousand years.<sup>3</sup> This is not a simple tale of the conquest and domination of native inhabitants. At least six times during this long history a "minority" group has conquered the Han and has established a dynasty over at least a major part of China.<sup>4</sup> The most recent example was the

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2 As this article was being prepared, the data from the 1990 Census of the People's Republic of China was being released in bits and pieces that complicate definitive statistical statements. As reported in *Population of China's Ethnic Nationalities*, BEIJING REV., Dec. 24-30, 1990, at 34, the State Statistical Bureau No. 3 Communiqué of Major Data of the 1990 Census reports a total population of 1,133,682,501, of which 1,042,482,187, or 92%, are reported to be of Han nationality. There are large reliability problems with the Chinese census, including the presence of a "floating population," said to be as large as sixty to seventy million people, living in localities where they do not have official residence status, and the presence of large numbers of undeclared children, said to exceed ten million, born in violation of family planning policies. Cartier, *The Fourth Census*, 1433 CHINA NEWS ANALYSIS 1-9 (April 15, 1991).

3 J. DREYER, CHINA'S FORTY MILLIONS.1 (1976) (citing 38 W. EBERHARD, KULTUR UND SEIDLUNG DES RANDVOLKERS CHINA 412-19 (Supp. 1942).

4 Thais during the Warring States Period, 403-221 B.C.; Topa during the Northern Wei Dynasty, 386-534; Khitan during the Liao Dynasty, 907-1125; Jured during the Chin Dynasty, 1115-34; Mongols during the Yuan Dynasty, 1260-1368; Manchu during the Qing Dynasty, 1644-1911.

Manchu Qing Dynasty, ruling China from 1644 to 1911 and, during much of its long history, systematically suppressing the Han.

It is easy enough for us to see that an invading group which sweeps down upon us on little ponies, speaks a strange language, and observes exotic customs, forms a distinct people. The same can be said for an indigenous group that has lived in isolation up in the hills of our homeland. Han self-definition traditionally has been less clear-cut. It was grounded less on either ethnic diversity or territorial origin, and instead was based heavily on whether the group in question engaged in the pursuit of settled agriculture. Those who followed this way of life were absorbed into the Han.<sup>5</sup> Those who followed other ways of life were relegated to land not suitable for agriculture at the edge of society and of consciousness. A recent essay by Francois Thierry connects the use of nonhuman elements in the Chinese written characters to describe non-Han people with the marginal status of these people. They were described with symbols indicating reptiles, dogs, worms, or grass, to suggest that they were wild, rude, not settled in location, and by extension, not in power.<sup>6</sup>

The term in general use throughout China today, and to which legal connotations are assigned, is "minority nationalities" (*Shaoshu minzu*). The defining term is nationality (*minzu*). The confusing aspect of the use of this terminology is the fact that *minzu* is not a classical Chinese word. It began as a Japanese neologism created during the nineteenth century to express novel Western concepts of nationalism in Chinese characters. It was borrowed back into the Chinese, popularized by Sun Yat-sen, and is currently used in various contexts with a number of different connotations.<sup>7</sup> The term *minzu* is used in modern Chinese without clear distinction to describe either a people, a nation, a nationality, or an ethnos.<sup>8</sup>

Today fifty-five of these groups are legally recognized as distinct nationalities, although these groupings are quite arbitrary and

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5 The problems of thinking about the interaction between the Han and other groups in terms of "absorption" or "sinicization" are fully explored in Crossley, *Thinking About Ethnicity in Early Modern China*, 11 LATE IMPERIAL CHINA 1 (1990).

6 Thierry, *Empire and Minority in China*, in MINORITY PEOPLES IN THE AGE OF NATION-STATES 76, 78 (G. Chaliand ed. 1989).

7 The link to Sun Yat-sen is developed by Dru Gladney in his forthcoming book, *D. GLADNEY, MUSLIM CHINESE: ETHNIC NATIONALISM IN THE PEOPLE'S REPUBLIC* 82-87 (1991). See also Crossley, *supra* note 5, at 19; Min Fu, "Minzu Ban," 6 MINZU YANJIU 1-23 (1983).

8 T. HEBERER, *CHINA AND ITS NATIONAL MINORITIES: AUTONOMY OR ASSIMILATION?* 10-11 (1989).

the number of self-identified groups is substantially larger. Many of these nationalities are quite small; the 1990 Census reports at least twenty-two with fewer than one hundred thousand members. However, fifteen nationalities have a population of over one million, and the five largest have a population comparable to many smaller European nations.<sup>9</sup>

National minorities are a very diverse group on the basis of almost any imaginable index of identity. Some of these groups have lived dispersed in the heart of Han China for a thousand years or more; they speak only the Chinese of their neighbors and have few behavioral or physical marks of their distinct identity.<sup>10</sup> Others live in isolated settings that guard their identity along with their very distinct language, dress, form of social organization, and way of life. Some live in border regions at the edge of the Chinese world. Han China is heavily concentrated on arable land along major river valleys and along the coast. Although, overall, the minority groups include less than one person in ten, the autonomous areas set aside for them include two-thirds of the territorial area of the People's Republic of China.

A few of these groups possess a coherent cultural and geographic identity that supports their description as a nationality in the Western or Soviet sense. Members of other minority groups maintain their personal identity, but are economically and socially integrated in urban China. Some groups have only shreds of an identity that mark them as the remnants of peoples whose role in Chinese history ended at the edges of memory. These include small groups that claim to be Gypsies, Iranians, and Jews. Other groups live lives that seem as exotic to us as any human existence. Small groups of Siberian hunter-gatherers continue to follow the reindeer through the northern stretches of the Northeast. In the South, matriarchal, matrilineal, and matrilineal groups pursue polyandrous ways of life. Small slave cultures persisted in Yunnan until the repressions of the late 1950s.

For most of the past two thousand years, the general aim of imperial policy was clear; these groups were to be controlled and

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9 *Population of China's Ethnic Nationalities*, *supra* note 2.

10 Compare Dru Gladney's description of Muslim Chinese groups, D. GLADNEY, *supra* note 7, with David Wu's description of the Bai in Wu, *Chinese Minority Policy and the Meaning of Minority Culture: The Example of Bai in Yunnan, China*, 49 HUM. ORGANIZATION 1 (1990) or Stevan Harrell's description of the Yi in Harrell, *Ethnicity, Local Interests, and the State: Yi Communities in Southwest China*, 3 COMP. STUD. SOC'Y & HIST. 515 (1990).

discouraged from aggression against the Han. A vague commitment to loyalty to the emperor was sufficient, and there was little interference with traditional customs, languages, and governing systems. In the absence of some major threat to peace in the territory, the imperial government penetrated into local life only slightly and intervened in limited ways, usually only down to the county level of government.<sup>11</sup> This limited penetration of the imperial regime into the local communities provided the foundation for the complex balance between central government and groups that marks so many aspects of Chinese life. It enabled the local ethnic cultures to exist for long periods of time without the need for constant rebellion, encouraged limited assimilation and exchange between the Han and minorities, and enabled the two cultures to live alongside each other. As the empire expanded during Ming-Qing times (the fourteenth through nineteenth centuries), the formal structures of relations with these remote peoples remained somewhat hazy on both sides, particularly with peoples in border regions.

Over time, assimilation and sinicization proceeded as the minority groups were encouraged to absorb Chinese ways. The pattern is a familiar one. When the Chinese central government is weak, troops are withdrawn from border areas and outsiders tend to move in. When the central government is stronger, Han soldiers are settled in the outlying regions, imperial officials confirm and bestow titles on traditional group leaders, scholarships are established to train young members of the group according to Confucian principles, and gradually a Han population moves into the area to pursue sedentary agriculture.

In addition to this traditional and imperial backdrop, contemporary Chinese legal treatment of minorities has roots both in nationalism and socialism, the two competing twentieth century movements that sought to overthrow the traditional imperial structure. On an idealistic level, the Nationalist revolution introduced Western notions of nationalism that seem contradictory in the Chinese setting. At its early stages the movement promised minorities self-determination and self-government, including the right to leave the nation. At the same time, the movement promised to create a China that would form a single cultural and political whole. Sun Yat-sen declared that "China is one nationality."<sup>12</sup> Af-

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11 J. DREYER, *supra* note 3, at 12-13.

12 J. DREYER, *supra* note 3, at 16; SUN YAT-SEN, SUN YAT-SEN: HIS POLITICAL AND

ter the ascendancy of Chiang Kai-shek, the principles of unity and assimilation became even stronger. Chiang insisted that all the peoples of China were merely distinct clans (*zong-zu*) of a single racial stock (*zhong-zu*); this was a very remarkable assertion.<sup>13</sup> Talk of self-determination faded. The obvious contradictions in these political positions did not create insuperable practical difficulties, because at no time did the Nationalist regime extend its hegemony over the entire territory that the Qing claimed as their empire. British and Russian instigation led to the practical loss of control over large areas dominated by well-defined local groups, such as Tibet and Mongolia, for many decades.

The Socialist revolution that was to come to ascendancy in 1949 inherited not only the contradictions of Nationalist policy, but also the dilemmas of Marxian attitudes toward nationalism. The Chinese revolution also inherited the particular synthesis of these dilemmas found in the attempts of Lenin and his Commissar of Nationalities, Joseph Stalin, to forge a minorities policy for the Soviet state after 1917.<sup>14</sup> Marx understood nationalism to be a tool of the bourgeoisie, the dominant group, that allowed such group to encourage divisions among the proletariat of different countries. In a primitive oppressive society, nationalism might be a progressive force, while for a nation at a more developed capitalist stage, nationalism is a reactionary force. Upon the triumph of the workers such differences would soften, if not entirely disappear.

Han always formed the vast majority of the Chinese population; Russians, on the other hand, are a minority in the territory of the Soviet Union. For Lenin, it was necessary for the Socialist revolution to enter into temporary, expedient alliances with nationalistic elements in order to gain mass support. For the Soviets, these "popular front" alliances would confer "freedom" on the nationality that would include "self-determination" of an ill-defined sort. Ultimately, this stage would give way to a policy-seeking fusion of nationalities based on emerging proletarian consciousness. During the period of Soviet consolidation of power, Stalin favored a high degree of respect for local language and culture, but by the early 1930s, this policy shifted sharply toward stern repression

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SOCIAL IDEALS 168 (1933).

13 CHIANG KAI-SHEK, CHINA'S DESTINY 12-13 (1947). See generally J. DREYER, *supra* note 3, at 17; T. HEBERER, *supra* note 8, at 18.

14 This discussion draws heavily on J. DREYER, *supra* note 3, at ch. 3, and T. HEBERER, *supra* note 8, at ch. 3.



of local elites, deportations, and destruction of minority cultures and economies.

The twisted path that minority policy took in China as the Communist Party struggled for power has been masterfully described by June Dreyer.<sup>15</sup> During the earliest periods, the Party was primarily an urban, Han group not overly concerned with minority issues and quite tolerant of minority independence. For instance, the Constitution of the Kiangsi (Jiangxi) Soviet in 1931 called for the recognition of the right of self-determination of the national minorities, including the right of complete separation from China.<sup>16</sup> The Long March and the struggle with the Nationalists and the Japanese pushed the Communists into closer contact with minorities in areas of Western China and modified their attitudes. By 1938, the emphasis changed from self-determination to autonomous administration and respect for minority language, culture, and education within a unified state with the Han.<sup>17</sup> Mao Zedong saw the minorities problem as a class problem that would disappear when class differences faded in favor of a homogenous proletarian culture.<sup>18</sup>

Viewed this way, the minorities problem was a transitional issue and a pragmatic problem. During the transitional period, different political groups joined under the leadership of the Communist Party in a united front against their common enemies. Minorities became one element in this united front. Toleration by the majority increased harmonious relations among ethnic groups, and thus it produced a homogenous culture. The aim of the policy of toleration, therefore, was assimilation, which would end with the elimination of the minority groups.<sup>19</sup>

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15 J. DREYER, *supra* note 3, at ch. 4.

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The Soviet government of China recognizes the right of self-determination of the national minorities in China, their right to complete separation from China, and to the formation of an independent state for each national minority. All Mongolians, Tibetans, Miao, Yao, Koreans, and others living on the territory of China shall enjoy the full right to self-determination, i.e. they may either join the Union of Chinese Soviets or secede from it and form their own state as they may prefer . . . . The Soviet regime must encourage the development of the national cultures and of the respective national languages of these peoples.

Constitution of the Soviet Republic (November 7, 1931), *reprinted in* C. BRANDT, B. SCHWARTZ, & J. FAIRBANK, A DOCUMENTARY HISTORY OF CHINESE COMMUNISM 220, 223-24 (1952).

17 J. DREYER, *supra* note 3, at 67.

18 *Id.* at 95, 261.

19 *Id.* at 262.

The term "assimilation" has at least two major connotations in this context. First, it suggests acculturation, the diminution of cultural distinctiveness, and the loss of special minority characteristics, language, clothing, and identity within a larger Chinese identity. A second connotation of assimilation is the structural integration of minority institutions in a larger Chinese society. Both connotations have important legal dimensions, and both were pursued by the government and the Party. Structural integration was promoted via the adoption of procedures for the establishment or recognition of autonomous areas to be governed predominantly by members of minority groups. The expectation was that general national policies would be modified to meet local circumstances and that local leadership would be called upon to govern in these areas. In this way, minority community leadership and patterns of organization would be assimilated into the structure of the People's Republic of China. Acculturation was to proceed by increased contact between minority and Han communities, but much attention with regard to policy was directed to fostering minority culture, particularly language. A variety of programs were established that sought to encourage the recruitment of minority party cadre and the education of talented young minority nationals. There is an obvious tension between the policy of assimilation, which suggests convergence, and these institutional, educational, and cultural programs, which strengthen a sense of permanently distinct minority identity and create substantial economic and status incentives to retain that identity.

Minority policy since the establishment of the People's Republic of China in 1949 has oscillated in response to systemic pressures on the national government and Party. A major influence has been the deeply rooted determination to maintain Chinese hegemony over the minority territories. The years of consolidation after the founding of the People's Republic were times of great stress and friction with neighbors. The British had withdrawn from the Indian subcontinent, leaving a vacuum in Tibet and other buffer states in the South. A short war with India in 1961 emphasized the vulnerability of the southern border that was dominated by the Tibetan Plateau. The Soviets threatened fragile Chinese control in Xinjiang in the West, and a war had to be fought in Korea to fend off American challenges in the Northeast and across the Taiwan Straits.

Minority policy combined seemingly conflicting efforts to bring these people into the nation—on the one hand by subsidies,

enlistment of elites, advancement of education, and support of economic development, and on the other by ruthless suppression of separatist movements. Obviously, these two branches of the policy worked very differently for individual minority groups. For the smaller groups, who posed less of a security threat, the policy was quite benign. In the early 1950s, over four hundred ethnic groups came forward and claimed minority nationality status.<sup>20</sup> Between 1956 and 1958, several hundred officials, scholars, and students participated in an ethnographic and linguistic survey that attempted to identify ethnic groups and verify their status.<sup>21</sup> By 1958, the major legal features of the minority policy were in place. Structures to define autonomous regions, and procedures for the definition and recognition of minority groups, had created large areas, some of provincial size, nominally run by minorities.<sup>22</sup> Minority leadership was recruited by the government and the Party, but the continuing problems with finding suitable local leaders suggest the difficulties that the national government faced. Other programs advanced the teaching of local languages<sup>23</sup> and the education of minority youths. At the same time, purges in the West and Northwest and military suppression in Tibet testified to a harsher side of the policy.

During this same period, personal and household registration was instituted on a national basis. This program had roots in traditional China, where family registration was connected to state interests in taxation, military conscription, and other census purposes. As the system developed under the communists, however, it became a cornerstone of state control over the population, collectivized through work and residential units (*danwei*). As it applied to individuals, household registration became an increasingly effec-

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20 T. HEBERER, *supra* note 8, at ch. 3; FEI HSIAO TUNG (FEI XIAOTONG), TOWARD A PEOPLE'S ANTHROPOLOGY 60 (1981); *see id.* at 53-55, 60-69; Wu, *supra* note 10, at 2.

21 J. DREYER, *supra* note 3, at 98-104; FEI HSIAO TUNG, *supra* note 20, at 61.

22 J. DREYER, *supra* note 3, at 104-14.

23 During this period, the various long-term projects to standardize the written and spoken national language (*putonghua*) bore fruit with the introduction of simplified characters and a standardized pronunciation. At the same time, minority nationality written and spoken languages were standardized, and in some cases created. Heberer summarizes this movement with the statement that in 1949 "eleven written languages of ethnic minorities were in regular use, and seven others were used sporadically. Since then, twenty-five written languages for ethnic minorities have been codified through the creation of new scripts, some based on the Latin language." T. HEBERER, *supra* note 8, at 16-17 (citations omitted). The State Nationalities Affairs Commission recently reported "that in 1988, 38.16 million books of 3,294 titles were printed in ethnic languages." *Ethnic Books Planned*, China Daily, April 1, 1991, at 3.

tive measure of police control and internal migration. It also became important to the topic of this Article because registration established an individual's minority status.

By 1958, larger political forces within China were leading the nation in a more collectivist direction designed to speed economic progress. The Anti-Rightist Campaign gave way to the Great Leap Forward, the first of several mass movements that culminated in the Great Proletarian Cultural Revolution a decade later. These movements brought little good news for minority groups. Separate languages, distinct leadership, traditional cultures, and claims to distinct identity were all branded with very negative labels and were actively suppressed. Collectivization and destruction of traditional religious culture led to open revolt in Tibet and less dramatic opposition in other areas. The predictable response was repression of language, culture, and group leadership. At the same time, millions of Han youth were sent from the cities out to the minority areas.

Only in the early 1970s were these policies moderated. Gradually, minority leaders were rehabilitated, and the use of minority languages was tolerated to a greater extent. Government and Party policy toward minority groups since 1978 has been quite mild up to the point when the government views a group's activity as "separatist." In this respect it is reminiscent of traditional Chinese policies. Minority nationalities are granted autonomy so long as it does not lead to separation of the group from the Chinese state. Separatist activity is to be crushed with military force if necessary. Political inducements are used to motivate local leaders to promote the national program in minority areas.<sup>24</sup> Party organs are to mobilize forces opposed to separatism within the minority groups and to form a united front in which the Party will support those elements in the minority community that oppose separatism.

The pace of these ameliorative changes has accelerated during the past fifteen years. Some program elements, such as preferential university admission for minority students, are embodied in unpublished policies and regulations. Others, such as the exception made for minorities in family planning policies, appear even less clearly defined, although they are very important in practice.

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24 There is a rather detailed report in the Hong Kong press. *The CPC's Trilogy in Handling Nationality Problems: Military Crackdown, Political Inducement, and the Mobilization of Masses*, Tang Tai, April 21, 1990, at 11 (translated in English, Foreign Broadcast Information Service, China, April 26, 1990, at 29).

The General Programme of the People's Republic of China for the Implementation of Regional Autonomy for Nationalities,<sup>25</sup> which had been an organic law since 1952, was reshaped and promulgated in 1984 as the Law of the People's Republic of China on Regional National Autonomy.<sup>26</sup> This new law not only broadens and formalizes the authority of the autonomous authorities, but it states their role in detailed legal terms that appear to give much greater specificity to the promise of autonomy. It creates forms and structures for autonomy and enhances the status of the autonomous authorities.

The practical importance of these changes cannot yet be judged conclusively. In part, their effectiveness will depend on the success of the attempts to build respect for legality, and on opportunities for legal challenge and review of administrative behavior that does not comply with legal norm. The significance of the law also must be judged in view of the broader currents within Chinese polity, under which central economic and governmental power have devolved to local units. This devolution of power can be seen in many areas of Chinese life and does not appear to be abating. For example, the shift away from central economic planning, in favor of enterprise responsibility and organization of economic transactions by contract, may not be easily reversed once the power has flowed away from the center. For the autonomous minority administrations, this devolution has been a two-edged sword. The increased autonomy of local authorities to deal with local matters has been matched by a decline in central financial resources that has threatened the solvency, and therefore the capacity to act, of many poorer local units.

## II. MINORITY STATUS AND THE GROUP

Minority nationality status operates on two levels in China. Legally recognized nationality groups have significant advantages, most notably autonomy. Aside from these group consequences, membership in a national minority has distinct consequences for the individual. These two levels of consequence are linked. Individuals who are members of unrecognized ethnic minorities are not granted the advantages accorded individuals who are members of a recognized group. Conversely, participation in the group

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25 *Reprinted in* THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 180 (1952).

26 *Reprinted in* THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 87 (1984) [hereinafter *Law on Regional National Autonomy*].

institutions of minority autonomy is dependent, it appears, on individual membership and registration in the group.

The process by which a group is recognized as a national minority is quite complex, and important details have not been reported in the available literature. Its impetus is understood to be under the control of the state, although the process contemplates some application by the group seeking recognition. It is not clear, in the context of Chinese political life, how a group can organize itself to the point where it can define itself and apply for recognition, unless there is active support, or at least toleration, by the state and Party.<sup>27</sup>

Perhaps the most remarkable feature of this process is the extent to which it claims to treat the definition of minority nationality as a matter of expertise. Since the 1950s, an important part of this process has been entrusted to a group with a heavy social science representation that undertakes remarkably detailed ethnographic, linguistic, and anthropological studies of the group to define its contours and test its claim.<sup>28</sup> The criteria for nationality status are those originally stated by Stalin: a nationality is a) a stable community of people, who b) share a common language, c) share a common territory, d) share a common economic life, and also share e) "a typical cast of mind manifested in a common culture."<sup>29</sup> This definition places more weight on the concerns of social anthropology for the concept of ethnicity than it does on the political dimensions of a potential self-governing unit.

In practice, of course, despite the impressive studies that legitimize the decisions made, it appears that the political concerns of the government, rather than any internal characteristics of the minority group, are dominant in deciding which groups are recognized and which are not. A paradoxical consequence is that it is the identification of a group as a minority by the government, and the granting of special status to that group, which, to a substantial degree, ensures the continued existence and ethnic consciousness of that group. By its minority policy, the state creates a set of vested interests in that minority status and ensures that the state's proclaimed goal of assimilation will not be reached.<sup>30</sup>

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27 Renkun, *Implementation of Regional National Autonomy Laws and Some Problems of Theory and Policy*, 2 MINZU YANJIU 27, 32 (1990).

28 J. DREYER, *supra* note 3, at 141-46; Guldin, *Chinese Anthropologies*, 1988 CHINESE SOC. & ANTHROPOLOGY 3, 9-15; Wu, *supra* note 10, at 2.

29 Stalin, *Marxism and the National Question*, 11 WORKS 1907-13 (1953).

30 I understand Stevan Harrell to be making a similar point when he reminds us

### III. AUTONOMY OF MINORITY NATIONALITIES

The major consequence of recognizing nationality status is that an autonomous area may be established in those areas where members of the group are concentrated. The preface to the 1984 National Law on Regional National Autonomy states:

Regional national autonomy means that the minority nationalities, under unified state leadership, practise regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. Regional national autonomy embodies the state's full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principles of equality, unity and common prosperity for all its nationalities.<sup>31</sup>

The basic scheme is that an autonomous area is to be established within any territorial unit of the state where minority nationality members are concentrated.<sup>32</sup> Thus, an autonomous area may be a unit of the whole nation known as an autonomous region, roughly equivalent to a province; or a province may establish an autonomous prefecture or district within its borders; or a district may establish an autonomous county. The key is population concentration. Within regions that have a number of minority groups, it is not uncommon to find that one autonomous area will establish a lower level for another autonomous area, within its borders, for a group that lives among the minority for whom the larger region has been established.

The territory of autonomous areas includes about two-thirds of the geographic area of the People's Republic of China. About

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that:

Ethnic groups in action, as political and economic collectivities, are defined not so much by their internal characteristics of shared descent and common culture but more by their external relationships with other ethnic groups and with the state. It is this relationship that makes ethnicity important in the everyday lives of ethnic group members; and in a very real sense it is impossible for a social system to contain only one ethnic group: the characteristics that define ethnicity—culture and descent—become important only when they serve to solidify a group that acts in a political and economic system that also contains other groups.

Harrell, *supra* note 10, at 515, 516.

<sup>31</sup> Law on Regional National Autonomy, *supra* note 26, at 87-88.

<sup>32</sup> The criteria of concentration have not been fully explained and puzzle Chinese commentators. See, e.g., Renkun, *supra* note 27, at 33.

four out of five minority nationality members live in this territory. In many of these areas the minority citizens form a distinct majority, but in some of the most important areas (such as Xinjiang) census figures indicate that Han migration has led to the minorities being a minority in their own area. This threat of Han encroachment is a strong force in the minority areas. Tibetan resistance, and that of Turkic people in Xinjiang, have focused on opposition to the migration of the Han and their domination in economic, political, and military terms. In an effort to placate this resistance, it is reported that Han settlement has been stopped and settlers have withdrawn from the Tibetan Autonomous Region.<sup>33</sup>

China is a unified state in which all officials are agents of central authority. Moreover, Communist Party control and democratic centralism leave little room for local self-government not subject to control from the center. Nevertheless, practical limits on central control are very real at all times. China is a vast country with strong local traditions and leadership. Formal central authority has penetrated only to the county level, where the heirs of the imperial magistrates and military authorities represent the interests of the central state. As a practical matter, the opportunities for local variation are extensive, even though they are not institutionalized in the formal organization of the state.

In this setting, the position of autonomous areas is unique, as the law grants these areas broad powers to set local policy and to suspend general national legislation deemed inconsistent with the local situation. As long as the policies regarding national autonomy remain merely aspirational statements, and are not reflected in

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33 The reported statistics on this reduction in Han settlement are quite precise, but are not in apparent agreement with each other. On two days in April 1991, the China Daily carried stories on the subject. The first reported that between 1980 and the end of 1990, the number of Han sent to Tibet to work decreased from 80,000 to 50,000, at which time they accounted for 2.3% of the region's population. *Tibet Remembers Non-Tibetans*, China Daily, April 12, 1991, at 3. Two days later, a story in the same newspaper reported that Tibetans account for 95.46% of the region's population (up from 94.4% in 1982), while Han make up 3.7% (down from 4.85%). *Truth About Tibet Related by History*, China Daily, April 14, 1991, at 4. See Ming, *Tibet's Population: 1 Million More in 40 Years*, BEIJING REV., April 22-28, 1991, at 45, 48, which also states that Tibetans account for 95.46% of the population in the Autonomous Region. Most of Tibet as an ethnic and cultural entity is already outside of the Autonomous Region. Most Tibetans live in areas of the Tibetan Plateau that now are part of the Qinghai and Sichuan Provinces where Han are permitted and encouraged to settle. Tideman, *Tibetans and Other Minorities in China's Legal System*, 14 REV. SOCIALIST L. 5, 8, 16 & 18 (1988).



the authoritarian practices by which the area is governed, they may have little significance. To the extent that they are embedded in a legal framework that gives the local interests a legitimate basis and, most importantly, a process through which local concerns can be asserted at the expense of national administrative preference, the system of autonomous national areas may become very significant indeed. Two central aspects of the changes in China since 1978, namely emphasis on legality and the devolution of power from the center to the locality, appear, therefore, to support the potential of autonomy to become important.

#### IV. THE CONTENT OF AUTONOMY

Chapter 1 of the Law on Regional National Autonomy contains a rather bewildering variety of general statements regarding the function of the autonomous area governments. It is clear from article 4, for instance, that the organs of self-government have broader powers than local organs of the state in other areas. Although in article 5 the autonomous area governments are enjoined to uphold the unity of the country and guarantee that national laws are observed and implemented, it is also clear that preference is to be given to members of the national minority in leadership roles. The chairman and vice-chairman of the standing committee of the people's congress of the autonomous area, the chairman of the region, the prefect, and the county head all must be members of the national minority. Article 18 requires that cadres in all departments of the autonomous government should, wherever possible, be chosen from minority nationality citizens. Article 20 grants the autonomous area at least limited authority to suspend and alter resolutions, decisions, orders, and instructions from higher level state organs that do not suit the conditions in that area.

It may be misleading to place too much emphasis on the details of the articles of the law granting specific powers to the autonomous areas. Many of these articles contain limiting clauses; others limit the power granted in the beginning of a sentence by requiring permission from higher authorities at the end of the sentence. The powers are potentially very broad and include control over economic planning and development, foreign trade, capital construction, exploitation of natural resources and environ-

mental control,<sup>34</sup> culture, religion, language, education,<sup>35</sup> administration of finances and revenues, taxation, and family planning.

Other group benefits of minority status include the right to send delegates to local and national people's congresses. Minority groups are represented at the National People's Congress, at a rate that is approximately twice their proportion in the population in general.<sup>36</sup> The practical lack of power that marks most people's congresses certainly reduces the significance of this feature of electoral politics.

Significant measures of the benefits of minority group status are the economic, educational, and public health benefits the status carries. In each of these areas there appears to be some basis for official claims that the position of minorities has improved dramatically, although there is also a strong basis for the complaint that minority areas lag far behind the low levels of the rest of the country. For example, the State Nationalities Affairs Commission reports that from 1980 to 1985 the number of minority students in high schools, middle schools, and primary schools has increased by 118%, 18%, and 27%, respectively, yet the rates of adult literacy in the minority nationalities areas remain between 40% and 50%.<sup>37</sup> Similarly, the official newspaper, *Renmin Ribao*, recently reported that in the five autonomous regions and the three multinational provinces of Yunnan, Guizhou, and Qinghai, the gross domestic product grew 37.6% between 1985 and 1990 and industrial and agricultural output was up 50.8% during the same period.<sup>38</sup> At the same time Premier Li Peng states that the goal of the government is to ensure that the people living in these areas have adequate food and clothing by the year 2000. This report recognizes that per capita industrial and agricultural output in these areas is barely half that of the nation as a whole.<sup>39</sup> Since the same report indicates that the rate of econom-

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34 Law on Regional National Autonomy, *supra* note 26, art. 45, at 97.

35 *Id.*, art. 37, at 96.

36 *Plan for the Allocation of the Number of Deputies to the Sixth National People's Congress Among the Minority Nationalities*, THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 23 (March 5, 1983).

37 *Autonomy for the Minority Nationalities of China*, 1391 CHINA NEWS ANALYSIS, August 15, 1989, at 7.

38 Wang Jin, *The Economies of Minority Nationality Regions Are Growing Steadily; the State Will Further Support Economies of Minority Regions During the "Eighth Five-Year Plan,"* *Renmin Ribao*, Feb. 24, 1991, at 4 (translated in English, Foreign Broadcast Information Service, China, March 1, 1991, at 40-41).

39 Xie Liangjun, *State to Continue Ethnic Area Programme*, *China Daily*, April 16, 1991,

ic development is substantially lower than for the rest of China, inevitably this gap will widen.

#### V. IMPACT OF MINORITY GROUP STATUS ON THE INDIVIDUAL

An individual's status as a member of a minority nationality carries with it a number of specific benefits in China today, along with the burden of social stigma that can be assumed to still exist. In addition to receiving the right to participate in the autonomous group and its governmental organs, the nationality member benefits from the benign quota system, which allows minority nationality members to receive a substantial preference in autonomous area party cadre and government leadership positions. A major aspect of these preferences is education, where minority status apparently gives the applicant a very significant advantage of ten points on the university entrance examination. The aim of these policies is to integrate and assimilate minority members into the Chinese ruling elite. The rules also provide options to encourage the maintenance of distinct ethnic identity by creating programs for education in the minority language.<sup>40</sup>

According to one Chinese minority informant, these two policies cut in conflicting directions. Since educational materials, good teachers, and advanced courses in minority languages are likely to be in very short supply, students with academic ambitions are likely to opt for education in Chinese rather than the minority language. A minority language education is a ticket to a career in the minority elite, which is perceived as a constricting and second-class ticket. If a young person wants broader opportunities, the path of assimilation through education in Chinese is preferred. Even if the Chinese path is chosen, the opportunities for assimilation into broader Chinese culture are constricted. A few educated minority members are assigned to positions that enable them to assimilate at the center of government in Beijing, but the great majority are returned to the area from which they came. There they are assigned to positions as visible leaders of the community, but they have few opportunities to go elsewhere in China. In this way the educational policy, which was intended to speed the assimilation of talented minority members in larger Chinese society, is likely to have the opposite effect, strengthening the degree to

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at 1.

<sup>40</sup> Law on Regional National Autonomy, *supra* note 26, art. 37, at 96.

which minority members are likely to view themselves as outsiders. The content of special minority education, and the encouragement of minority language, historiography, and culture, all support the same tendency to encourage a separate identity rather than assimilation with the Han.

In addition to these career, political, vocational, and educational advantages, minority membership carries other concrete benefits for the individual. Minority group members receive a different and preferential grain ration. This is available both to those minority nationality members living in autonomous areas and those living in cities among the Han. Grain ration tickets remain an important subsidy for urban residents, and the preferred ration enables some minority persons to engage in a secondary trade converting ration coupons into cash. Tax exemptions, subsidies, and governmental investments in infrastructure and community development are available in autonomous areas.

One of the more controversial aspects of minority policy has been the notably more lenient application of the one-child rule. Family planning has not been the subject of development through law in China. The policies are flexible, and their enforcement, which sometimes can be draconian, appears to occur without any legal process. In a 1990 policy statement at a nationality affairs conference, Premier Li Peng said:

Planned parenthood is a basic state policy of China. Since the situations are different, the state has adopted a lenient policy in dealing with people of minority nationalities on the issue of planned parenthood. This is extremely necessary. However, in order to take into consideration the matter of fundamental importance of raising the qualities of minority nationalities, people of minority nationalities should also launch a campaign for high quality in child birth and raising and bringing up children in order to improve the qualities of the population. We should also work out some feasible policies for planned parenthood that are suitable for people of minority nationalities while taking into consideration their customs, habits, and religious beliefs.<sup>41</sup>

It is tempting to speculate that the possibility of avoiding the harsh policies on population control is an important motivation

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41 Li Peng, *Perform Our Work Well Among Nationalities and Strive for the Common Prosperity of All Nationalities*, Xinhua, Feb. 19, 1990 (translated in English, Foreign Broadcast Information Service, China, Feb. 21, 1991, at 9, 12).

for persons to claim minority status. Certainly the perception that those who hold minority status are preferred on this matter, which is of such great importance for so many Chinese, is likely to be a source of friction between Han and minority members. This hostility also is fueled by the prominent position that is given to stories of very large increases in minority population. Overall, the minority population grew at three times the rate of the Han population between the two most recent censuses. This feeds a Han perception of unfair advantage and excess fecundity, which is likely to increase intergroup tensions. In fact, my reading of the census data does not indicate any strong link between population policies and increases in minority population.<sup>42</sup> Some of the largest increases were among the Manchu (128.18%) and Tujia (101.23%), who are relatively assimilated groups living in a setting where family planning presumably is practiced, while Tibetans, Uygar, and Kazak groups, who are notably unsympathetic to family planning, are growing at much slower rates (18.57%, 20.99%, and 22.38%, respectively).<sup>43</sup>

#### A. *Household Registration and Individual Minority Status*

An individual's nationality status is officially recorded as part of the household registration process. The household registration used in China<sup>44</sup> records each individual by name, profession, age, place of birth, and nationality with the local police organization. The registration is maintained by such local police agency, but each individual is given an official extract that serves as a kind of internal passport and credential. This document is needed to change residence, travel, change jobs, or otherwise adjust one's status. I have found little published material about this system, which is central to the control the government has over the movement and activity of individuals and groups.

The basic registration is that of the household; unmarried children remain part of their parent's registration until they move away from the family home. Unmarried adults typically are carried as part of their work unit's registration, perhaps on the assump-

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42 See *The Fourth Census*, 1433 CHINA NEWS ANALYSIS 1, 8 (1991).

43 *Id.*

44 Family and household registration also plays an important social role in other Asian nations. See Bryant, *For the Sake of the Country, For the Sake of the Family: The Oppressive Impact of Family Registration on Women and Minorities in Japan*, 39 UCLA L. REV. 109 (1991).

tion that they will live in dormitories provided by the unit. In practice this gives the unit extensive power over young adults, who must gain the approval of their unit to move or change jobs.

For purposes of this Article, the important entry in the household registration is nationality. Only Chinese citizens are registered; those foreigners living in China have other documentation. Within a household one would think that nationality is a fixed and rather obvious item of information, but my informants suggest that this is not always the case. To take an easy example, intermarriage between partners of different nationalities gives each spouse an option to retain their nationality or elect that of their spouse. Children of intermarriage also are faced with such a choice. Elsewhere in the world, such definitions of ethnicity can be quite rigid; Japanese and Jews spring to mind as examples. My Chinese, minority informant tells me that in China, on the other hand, the police are quite flexible in individual cases and will accept any colorable registration. We are not in a position, of course, to generalize from this informant's experience or to speculate on how much local practice varies.

Assimilation without intermarriage also may create nationality alternatives for individuals. Many of the recognized minority nationalities in China are not genetically distinguishable from the Han.<sup>45</sup> The identification is more a matter of degree of assimilation with the Han versus the degree of retention of the distinct language and customs of the minority group. It appears that during the periods of minority oppression of the 1960s and 1970s, many minority members changed their registration to Han. With the adoption of more tolerant policies by the government, large numbers of these individuals are now reclaiming their minority nationality status by changing their household registrations. This reclamation appears to be occurring on a broad scale, as is suggested by the press reports of millions of Chinese seeking to change their personal registration from Han to minority. The same inference is supported by the recently released 1990 census figures on minority groups. These statistics uniformly indicate sizable increases in the membership of minority groups at rates higher than the increase in the Han population. Some of the higher rates may be explainable in terms of a natural increase, aided by the more tolerant family planning policy and the likeli-

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45 See *supra* note 10.

hood of higher birth rates in remote areas and in less developed areas, where many minority nationalities live. Other differences must almost certainly reflect a statistical quirk, either the failings of the 1982 count or some change in methodology in 1990. Nevertheless, the changes are also highly consistent with the probability that more individuals were willing to be counted in 1990 than in 1982 and that they were willing to be counted as members of minority nationalities.<sup>46</sup>

### *B. Some Countervailing Effects of Change*

The changes in minority policy, carrying with them the new benefits of minority status, have encouraged the reclamation of minority status by millions of Chinese. These changes have been fixed in a legal structure that may give them new importance as decentralization and legalization become more prominent features of Chinese political life. They also have changed the nature of the nationalities problem with regard to at least some groups. The creation of job, educational, and family planning incentives to minority status can be expected to slow pressures for assimilation with the Han majority. The incentives create new constituencies with an investment in the special preferences made available to them only by maintaining their distinct identity. New leaders are appointed from minority groups and thereby gain a vested interest in having a group to lead. Minority nationality, to this extent, is no longer a transitional problem to be resolved by assimilation.

At the same time, the reduction in pressures for assimilation is not likely to be matched by opportunities and resources for those who choose minority identity in terms of language and culture. Minority education is likely to remain inferior, if the measure of effectiveness is the capacity to participate in an increasingly modern, large, Chinese society. It strains the imagination to think that in a society where textbooks and literacy in the dominant language are real problems, resources will be available to replicate educational assets in even a few of the minority nationality languages.

One side effect of the use of experts to identify minority nationalities has been greater scholarly attention to minority languages, including the writing of dictionaries and the publication of

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<sup>46</sup> I am told that somewhat the same situation is reflected in the 1990 U.S. Census with respect to Hispanics.

newspapers. Only the naive would suggest, however, that the minority languages have not been changed by this process. Those who speak only these languages are likely to have difficulty communicating with their elders, who are likely to speak the form of the language before it was "rationalized," and with their juniors, who are likely to be predominantly Chinese speakers. Such persons are fated to remain in isolated communities in which their language can be used. In this respect, the policies can be said to foster the creation of a permanent second-class status in the larger society for those who choose a separate path of education.

The possibility that autonomous local self-government will become a reality under the new legal regime also presents countervailing costs. The Law on Regional National Autonomy was passed at a time when it appeared that the devolution of political power from the center to the localities was one step in broader political reform that would create more room for diverse voices in China. The powers granted the autonomous areas under that law are explicitly broader than exist in Han local government. Now the wind has shifted, and political reform has been stopped by a regime more concerned with maintaining the dominance of the center. It is not clear yet whether this will reverse the trend toward greater autonomy in nationality areas.

Two central community issues are likely to be the testing ground for autonomy—namely, the immigration of Han people to settle in minority autonomous areas and the autonomous minority group control over the economic development and natural resource exploitation in minority areas. Press reports, particularly from Western China, suggest that there is tension between the Han and the minorities over both of these issues. It appears that the minorities already have become a minority of the inhabitants of the Autonomous Region of Xinjiang. The Chinese official press has taken pains to report several stories indicating that the number of Han settlers in Tibet has been cut substantially,<sup>47</sup> although some Tibetan sources have denied this to me in personal conversation.

The specific incentives and benefits that individuals receive as a result of minority nationality are likely to create jealous resentment among the Han neighbors, who do not enjoy such benefits. A predictable consequence of this resentment will be some weak-

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47 See *supra* note 33.



ening of the positive and tolerant attitudes toward the minorities that have encouraged the reclamation of minority status by millions of individuals. In short, the preferences and quotas are likely to feed the intolerance of minorities, inhibiting both social assimilation and the reclamation of their status. It is not clear that the legal protections and benign minority policies of the recent past will be sustainable should Han resentments of preferential treatment and increasingly centralized authoritarian government become dominant in China. As in so many such issues, we can be confident of one thing: the wheel continues to turn.

Traditional Chinese policy towards minorities fluctuates as the power of the ruling dynasty waxes and wanes. When the center is strong, the policy is to emphasize control by the center, sinification and cultural absorption of the minorities by education and co-option of local elites, and extension of Han settlement into minority areas. Modern ideological commitments lead the Chinese government to focus on self-determination, autonomy, cultivation of ethnic languages and cultures, and affirmative action to improve the lot of minority group members. The problem is seen as a temporary problem of social development that will be resolved gradually by a progressive process of unification of the minorities with the Han. Yet each of the steps just described also has an unintended implication—the creation of permanent minority interests that will be injured if the assimilative process is successfully accomplished. Modernization and economic development have the same unintended effect of fostering minority nationalism, as June Dreyer points out:

The experience of the Soviet Union has shown that raising living standards may actually encourage the growth of nationalist tendencies, presumably because more affluent groups have more time to devote to an essentially cultural-psychological problem such as nationalism.<sup>48</sup>

The characteristics of the legal structures used by the government have influenced this situation. Minority policy operates at two levels. It operates on the group level by creating opportunities to establish autonomous areas and by establishing preferred political and career positions for minority leaders. It operates on the individual level by offering incentives to declare minority status in order to obtain better food rations, receive a better education, be

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48 J. DREYER, *supra* note 3, at 274.

given better job opportunities, and have the possibility of having more than one child. The two levels of rules are connected, or nested. Individuals can claim membership only in recognized groups. The assertion of group interests is dependent on having members, and the government program operates substantially through incentives given to individuals.

The two levels are marked by differences in the kinds of legal rules used. The laws that describe autonomous areas and operate on the group level are quite specific and directive. There are substantial questions as to whether the system operates according to the rules, but the rules themselves are relatively unambiguous in delineating the devolution of authority to the autonomous community. In contrast, the rules on individual identity appear quite open and unspecific in content. They are invoked by an individual's act of applying for a particular status, and their central thrust is a broad rule of reference granting substantial discretion to police agencies.

The remarkable aspect of these rules is that on both levels they seem likely, in operation, to undercut the stated goal of assimilation of the minority nationalities. On the group level, recognition of autonomous status supports the recognition of permanent political identities for the minority nationality and the autonomous area. Once that identity is recognized, the incentives will maintain it. On the individual level, the government incentives all cut in favor of claiming minority status, and the choice is widely open to individuals due to the idiosyncratic application of the rules by local officials. As the census figures and reports of millions of applicants for change of status suggest, these rules may present a series of unintended challenges to the government's policy. Instead of a problem of assimilation that will be liquidated by time, and the social and economic integration of minorities into national life, the policy supports the reclamation and maintenance of minority identity. It may be that the kind of legal structure in place will foster the expansion of minority group concerns in the People's Republic of China.

