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Racial capitalism with Chinese Characteristics: analyzing the political economy of racialized dispossession and exploitation in Xinjiang

Vincent Wong¹

Abstract: *While human rights remains the predominant lens used to analyze the Chinese government's recent intensification of surveillance, incarceration, and control over Uyghurs and other non-Han native populations in the Xinjiang Uyghur Autonomous Region (XUAR), racial capitalism provides a more useful analytic in understanding the governing logics of political economy behind the development and justification of technologies of repression in the region.*

In this article, I argue that the severe intensification of discriminatory repression in the XUAR is not merely a question of political authoritarianism, but rather a phenomenon directly linked to Chinese state capitalism: the rise of the corporate state, greater integration of the region's economy into domestic and international energy and trade markets, the colonial imperative to eradicate Indigenous claims to the land. Most recently, the massive investments to transform the XUAR into a key global trade hub for the Belt and Road Initiative has spurred the development of a 'terror capitalism' security industrial complex that uses anti-Muslim counter-terrorism discourses to justify the expropriation and exploitation of Uyghurs and other non-Han native populations in data and labour-intensive private-public partnerships. These developments also have major implications for African publics, given that AI-enabled digital surveillance solutions perfected in the XUAR are now being sold by Chinese companies to African governments looking to bolster their own policing and state intelligence infrastructures.

This emergence of a "racial capitalism with Chinese Characteristics" during the development of China's highly ambitious Belt and Road Initiative poses a new and challenging questions for international economic law, which has traditionally elided questions of law and political economy.

1 Assistant Professor, University of Windsor Faculty of Law. Email: vw Wong@uwindsor.ca. The author wishes to thank the organizers and participants of the workshops for the Special Edition of the Journal of International Economic Law on Racial Capitalism. The author also wishes to thank in particular Ntina Tzouvala, Amar Bhatia, Sujith Xavier, James Thuo Gathii, Olabisi Akinkugbe, Kori Cooper, Szu-Yun Hsu, Fay Faraday, and members of the Lausan Collective for their invaluable editorial comments and guidance.

I. Introduction: Racial Capitalism, China, and the Uyghurs

‘With the vocational skills education and training centres as the carrier, a large number of coastal and inland enterprises have been attracted to invest and built factories in Xinjiang, which has significantly expanded both employment and economic growth.’

– Xinjiang Uyghur Autonomous Region Development and Reform Commission²

a. A contemporary human rights catastrophe

For decades, scholars, activists, and human rights organizations have been steadily detailing the Chinese government’s discriminatory policies towards Uyghurs and other non-Han Indigenous peoples in the Xinjiang Uyghur Autonomous Region (XUAR)³ - a frontier region of Northwest China⁴. However, since 2017, there has been a massive expansion and acceleration in the use of carceral, surveillance, and assimilative technologies targeting non-Han native populations in the region - primarily Uyghurs, who make up roughly 45% of the total and over 77% of the non-Han population in the XUAR⁵.

News surrounding the creation of a vast network of extrajudicial detention centres, a massive counterinsurgency effort to detain and forcibly assimilate Turkic Muslim populations, as well as stories around the brutal impacts of these policies began to trickle out of the region following the appointment of Chen Quanguo in August 2016 as the Communist Party of China (CPC) Secretary of the XUAR. Prior to this appointment, Chen served a five-year term as Party Secretary for the Tibet Autonomous Region (TAR) and became known for his hardline style of governance. Notably, under Chen’s leadership, the TAR regional government introduced a high-tech system of grid policing and ‘convenience police-posts’ that disproportionately targeted Tibetans, a system that he would expand upon in the XUAR⁶.

The massive scale of these efforts has spurred a spike in recruitment to hire as many as 150,000 new police officers in the XUAR through state-run ‘Xinjiang Aid’ offices in different provinces across China,

2 The stable and active development of the economy of the Autonomous Region, XINJIANG UYGHUR AUTONOMOUS REGION DEVELOPMENT AND REFORM COMMISSION (5 December 2018, 6:55 pm), <https://web.archive.org/web/20190520143306/http://www.xjdr.gov.cn/info/9923/23516.htm> (in Simplified Chinese).

3 For instance, see, Secret Violence: Human Rights Violations in Xinjiang, AMNESTY INTERNATIONAL (November 13, 1992), <https://www.amnesty.org/download/Documents/192000/asa170501992en.pdf>.

4 The name Xinjiang and the XUAR are highly contested terms. Xinjiang (which means ‘new frontier’ in Chinese) was first used by the 18th century Qing emperor Qianlong after the (re)occupation of the territory during his reign. Other names include ‘Northwest China’, ‘East Turkestan’, ‘Uyghuria’, ‘Uyghurstan’, ‘Dzungarstan and Altishahr’, and ‘Dzungaria and the Tarim Basin Region’.

5 These demographic figures are drawn from the 2020 Xinjiang census survey. See Main Data of Xinjiang Uygur Autonomous Region from the Seventh National Population Census, OFFICE OF THE LEADING GROUP OF XINJIANG UYGHUR AUTONOMOUS REGION FOR THE SEVENTH NATIONAL POPULATION CENSUS (14 June 2021), <https://www.fmprc.gov.cn/ce/cgtrt/eng/news/t1884310.htm>.

who are then assigned to the region after minimal law enforcement training. The counterinsurgency campaign has seen a litany of abuses, including arbitrary arrest and detention, torture and beatings during interrogation, forced separation of children from parents, mass rape, and forced sterilization and abortion procedures rendered against women while in custody⁸.

But while an impressive amount of information has been made available to the public sphere around systemic violations of human rights committed in this region, coverage has in general been limited in its focus to violations of civil and political rights. This has the unfortunate side effect of obscuring the question of why these policies are being implemented in the first place. Human rights law is structurally predisposed to focusing on victims and perpetrators, allowing those whose interests are advanced by systems of deprivation and privilege to remain comfortably out of sight⁹. As a consequence, we are unable to clearly see the ways in which the remaking of the economy of the XUAR as a key geopolitical hub for China's development – particularly in light of the massive ambitious of its Belt and Road Initiative (BRI) – has created the conditions for racialized discourses and policies to emerge that have facilitated mass abuses and intensive social control against Uyghurs and other non-Han native populations.

b. Racial capitalism's contingency: analysis outside the ambit of white supremacy

This analysis of the crisis in the XUAR actively expands our understanding of international economic law by revealing how political economy, racialization, accumulation, and (mal)distribution structure international law and its impacts beyond the traditional confines of international economic law scholarship. But why should racial capitalism be our theoretical starting point when discussing developments in the XUAR?

Within international law scholarship, racism has often been explored in debates surrounding empire and imperialism. For instance, Third World Approaches to International Law (TWAAIL) scholars have argued that the law on use of force for humanitarian intervention¹⁰, the law of counter-terrorism¹¹, and the recognition

6 China: Alarming New Surveillance, Security in Tibet, HUMAN RIGHTS WATCH, (Mar. 20, 2013, 8:30 am), <https://www.hrw.org/news/2013/03/20/china-alarming-new-surveillance-security-tibet>.

7 Wang Leizhan, UT Witness Statement, UYGHUR TRIBUNAL, (June 7, 2021), <https://uyghurtribunal.com/wp-content/uploads/2021/06/07-1000-JUN-21-UTFW-022-Wang-Leizhan-English.pdf>.

8 Amnesty International, Like We Were Enemies in a War: China's Mass Internment, Torture and Persecution of Muslims in Xinjiang, (2021), https://xinjiang.amnesty.org/wp-content/uploads/2021/06/ASA_17_4137-2021_Full_report_ENG.pdf.

9 Susan Marks, Human Rights and Root Causes, 71 *The Modern L. Rev.* 57, 76 (2011); Mahmood Mamdani, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)', 32(3) *Ethics* 32 (2002).

10 Makau Wa Mutua, Savages, Victims and Saviors: *The Metaphor of Human Rights*, 42 *Harvard Int'l. L. J.* 201 (2001).

(and non-recognition) of sovereignty¹², are governed by the racializing logic of the “civilizing mission” inherited from international law’s colonial past. These important scholarly interventions however, tend to follow a classical framework of imperialism in which “a dominant, unified imperialist core exploits an oppressed periphery” without paying adequate attention to processes of peripherization within postcolonial states. As a result, TWAIL approaches have been criticized by some as limited in the context of contemporary Indigenous struggles in Asia¹⁵.

As Robert Knox argues, the material structure of imperialism creates intense rivalries that shape the political and economic conditions that generate racial discourses¹⁶. Peripheralization may occur at multiple levels simultaneously: between nation-states, between regions, and between ethnicities through processes of racialization. Knox’s prescription to take account of inter-imperial rivalry in structuring the form in which racialization occurs in any given context allows us to see how and to what ends racial discourses operate in China’s northwest frontier. China’s massive Belt and Road Initiative (BRI) are simultaneously a product of inter-imperial rivalry with the US on a geopolitical level¹⁷ and a primary driver of the securitization of the XUAR on the domestic level. The logics of racial capitalism in the XUAR then can be seen as a strategy of rule constructing a certain part of the working class as racially privileged – attracting a series of economic, political and ideological benefits – and therefore enabling authorities to divide and manage labour most efficiently for capital accumulation¹⁸.

Analyzing the role of racial discourses in structuring the economic and social transformation in the XUAR serves as an important reminder of how the logics of racial capitalism go beyond white supremacy, complexifying the idea of a single global colour line that divides Blackness and Whiteness¹⁹. As Debra Thompson reminds us, “[r]ace was born in the transnational realm and bred to be central to discourses of modernity, empire, and capitalism”, its “impulses are simultaneously local and global, taking on a ‘characteristic specificity in the context of local, national, and state conditions, globally influenced and textured.’”²⁰ Thus, the materialist and global

11 Antony Anghie, *The War on Terror and Iraq in Historical Perspective*, 43 Osgoode Hall L. J. 45 (2005).

12 Antony Anghie, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (Cambridge: Cambridge University Press, 2005).

13 Robert Knox, *Race, Racialisation and Rivalry in the International Legal Order*, in, *RACE AND RACISM IN INTERNATIONAL RELATIONS: CONFRONTING THE GLOBAL COLOUR LINE*, 175, 176 (Alexander Anievas, Nivi Manchanda & Robbie Shillam, eds., 2015).

14 *Ibid.*, at 177-178.

15 Hiroshi Fukurai, *Fourth World Approaches to International Law (FWAIL) and Asia’s Indigenous Struggles and Quests for Recognition under International Law*, 5 Asian J. of L. and Society 221 (2018).

16 Knox, *supra* note 13, at 188.

17 Ho-Fung Hung, *Disintegrating US-China Economic Symbiosis and the New Inter-Imperial Rivalry*, MARXIST SOCIOLOGY BLOG, (Jul. 2, 2020), <https://marxistsociology.org/2020/07/disintegrating-us-china-economic-symbiosis-and-the-new-inter-imperial-rivalry/>.

18 David R Roediger & Elizabeth D Esch, *THE PRODUCTION OF DIFFERENCE: RACE AND THE MANAGEMENT OF LABOR IN US HISTORY* (Oxford: Oxford University Press, 2012).

19 Alexander Anievas, Nivi Manchanda & Robbie Shillam, *Confronting the Global Colour Line: An Introduction*, in *RACE AND RACISM IN INTERNATIONAL RELATIONS: CONFRONTING THE GLOBAL COLOUR LINE*, *supra* note 13.

orientation of racial capitalism suggests that in order to explore the full potential of the concept, we need to expand our analysis beyond the immediate ambit of white supremacy and carefully examine these dynamics in different contexts.

This orientation aligns with the foundational ideas of racial capitalism. For instance, in *Black Marxism*, Cedric Robinson argues that even in feudal Europe, immigrant Slavs and Irish workers were placed at the bottom of a racial hierarchy under Anglo-Saxon chauvinism.²¹ As he reminds us, ‘the tendency of European civilization through capitalism was thus not to homogenize but to differentiate – to exaggerate regional, subcultural, and dialectical differences into “racial” ones.’²² Race was never just a series of prejudices, but rather an organizing principle on a global scale that was sharpened through colonial encounters and which have also imbricated postcolonial states.

Like in many other postcolonial states, the language of ‘development’ has been used by the state to undermine the interests of native peoples in Xinjiang through the language of economic progress and nationalist unity – a vulnerability that is built into the very attributes of statehood under international law.²³ As China has moved away from the CPC’s initial outward commitment to socialist multiculturalism and economic equality²⁴ towards market liberalization and global integration, it has simultaneously nurtured exploitative economic structures that have to be managed and justified. In the XUAR, various axes of pre-existing social difference (e.g. religious, ethnic, tribal, linguistic, and physical differences) have been produced into race in order to rationalize and justify the inequalities attendant with turning the region into a hub for global trade and resource extraction. The very poverty of ethnicities that have been marginalized and dispossessed within these economic and nationalist structures becomes the proof of their cultural ‘backwardness’, which requires correction by the state to transform these populations in the mould of (Han) Chinese developmental modernity.

In particular, to understand the specific dynamics of contemporary racialization that primarily (but not exclusively) targets Uyghurs and other Turkic Muslims in the XUAR, we must examine how the post 9/11 equation of Islam with terrorism has resulted in what scholars have theorized as “global anti-Muslim racism”.²⁵ Writers such as Nisha Kapoor underscore the “bio-cultural” nature of anti-Muslim racism in that the both the biological and cultural logics of racism are present and entangled within their racial imaginary and subordination.²⁶ Islam is read through the lens of

20 Debra Thompson, *Through, Against, and Beyond the Racial State: The Transnational Stratum of Race*, in RACE AND RACISM IN INTERNATIONAL RELATIONS: CONFRONTING THE GLOBAL COLOUR LINE, supra nota 13.

21 Robin DG Kelley, *Foreword* to BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION, xiii (Chapel Hill: University of North Carolina Press, 3rd ed. 2020) (2000).

22 *Ibid.*, at 26.

23 Mohammad Shahabuddin, *Minorities and the Making of Postcolonial States in International Law*, 200-240 (Cambridge: Cambridge University Press, 2021).

24 Thomas S Mullaney, *How China went from celebrating ethnic diversity to suppressing it*, THE GUARDIAN, (Jun. 10 2021 3:00pm), <https://www.theguardian.com/commentisfree/2021/jun/10/china-celebrating-diversity-suppressing-xinjiang-communist-party>.

a cultural pathology where the expression of public and political acts of religion and spirituality is deemed to be signs of irrationality and backwardness and acts of political violence of Islamic resistance as senseless, illogical terrorism rather than examining them through the lens of broader decolonial and national liberatory struggles.²⁷ It is in this context that “looking ‘like a Muslim’ is to become hyper-visible and racialized as a type of danger and then subject to forms of disciplinary control – for example, invasive security checks, stop-and-search, police suspicion and imprisonment without charge.”²⁸ In addition, Ghassan Hage underscores how physical or cultural signifiers of Muslimness are fluid, contingent and often linked to colonial connections – through the gaze of being ‘Asian’ in Britain, ‘Turkish’ in Germany, ‘North African’ in France, ‘Arab’ in the United States, or by extension, ‘Uyghur’ in China²⁹.

Thus, a historically-situated ‘racial capitalism with Chinese Characteristics’ lens allows us to combine the social and economic, centering and highlighting the driving forces behind the Chinese government’s increased securitization of the XUAR. These forces include, inter alia, the rise of the corporate state, greater integration of the region’s economy into domestic and international energy and trade markets, the long-standing colonial imperative to eradicate Indigenous claims to land and resources; and a racialized security industrial complex that uses anti-Islamic counterinsurgency discourses to justify the expropriation and exploitation of Uyghurs and other non-Han native populations in data and labour-intensive private-public partnerships.

Tracing the history of Chinese political economy in the XUAR and applying a racial capitalist lens shows us that the severe intensification of discriminatory repression is not merely a question of Chinese political authoritarianism, but rather a phenomenon directly linked to forces set in motion by Chinese state capitalism³⁰ and the transnational racialization of Muslims that has emerged under the post 9/11 Global War on Terror framework³¹.

25 Sherene Razack and Zeynep K. Korkman, *TRANSNATIONAL FEMINIST APPROACHES TO ANTI-MUSLIM RACISM* (Durham: Duke University Press, 2022).

26 Nisha Kapoor, *DEPORT, DEPRIVE, EXTRADITE: TWENTY-FIRST-CENTURY STATE EXTREMISM* (London: Verso, 2018).

27 Lucy Mayblin and Joe Turner, *MIGRATION STUDIES AND COLONIALISM*, 158-163 (Cambridge: Polity Press, 2021).

28 *Ibid.*, at 142.

29 Ghassan Hage, *IS RACISM AN ENVIRONMENTAL THREAT?* (Cambridge: Polity Press, 2017).

30 There is extensive scholarly debate on how to classify the economy of contemporary China. This article adopts a working definition of term state capitalism in which the state has outwardly nationalized many key industries, undertakes for-profit economic activity through state-owned enterprises, works parallel to and in conjunction with a significant private sector, engages in processes of capital accumulation and wage labour, and where workers have little meaningful control over the means of production. For a brief overview of these theoretical debates, see Li Xing and Timothy M Shaw, *The Political Economy of Chinese State Capitalism*, *Journal of China and International Relations*, 88, 88 (2013).

31 On the specific racialization of Muslims in the XUAR context, see David Brophy, *Good and Bad Muslims in Xinjiang*, *XINJIANG YEAR ZERO*, 52-55 (Darren Byler, Ivan Franceschini, and Nicholas Loubere, eds., 1st ed., 2022); on the emergence of Islam as a socially constructed race, see Cyra Akila Choudhury, *Race and Identity in the Emergence of Islam as a Race*, *FLORIDA INTERNATIONAL UNIVERSITY LEGAL STUDIES RESEARCH PAPER NO. 22-02*.

c. **Thinking infrastructurally about law and the Belt and Road Initiative**

The format of this article heeds infrared scholars' call to "think infrastructurally" about international law. ³²According to Benedict Kingsbury: "[t]hinking infrastructurally typically entails understanding infrastructure not simply as a thing, but as a set of relations, processes, and imaginations." As an analytic, thinking infrastructurally calls on scholars to examine the combination of "the technical (the designed and engineered physical and software elements), the social (the human and non-human actants in their intricate relations), and the organizational (the forms of entity, regulatory arrangements, financing, inspection, governance, etc)." ³³In addition, choices about infrastructure can themselves "operate as regulation—but these regulators [those who make the infrastructural choices] are often themselves only thinly or unevenly regulated. The idea of infrastructure-as-regulation ('infra-reg') is that infrastructure can (and often does) operate in some significant relation to law."³⁴

This approach gives us a helpful blueprint by which to think about the relationship between law, China's Belt and Road Initiative (BRI), and the contemporary human rights crisis that has befallen Uyghurs and other non-Han native populations in Xinjiang. It allows us to consider how the technical infrastructures of the BRI (pipelines, rail, ports, and security/carceral infrastructure) both influence and are influenced by its organizational forms (that eschew detailed treaties for soft law and networks of agreements with China as the hub) that in turn interact with sociopolitical technologies (that racially mark Uyghurs as proto-terrorist dangers who must be controlled and reformed into pliable, patriotic workers) for the globalized purposes of extractive capitalism.

Thus, in Section II, I trace the history of the political economy of Xinjiang, from its relative isolation from the rest of China during the Qing Empire, to the creation of the Xinjiang Production and Construction Corps (XPCC), to the transformations as a result of market reforms in 1990s that domestically integrated the region's economy with the rest of China, to the contemporary global integrations unleashed by access to the WTO and most recently, the Belt and Road Initiative.

In Section III, I analyze the juridical infrastructure of the BRI and assess to what extent the governing logics of the BRI influenced and accelerated the logics of dispossession, exploitation, and surveillance in the region. I argue that the rhetoric of the Global War on Terror and its underlying anti-Muslim animus has, like in many places around the world, allowed state authorities to reframe anti-colonial dissent and struggles for self-determination as risk of terrorism and thus an endemic security risk that threatens global supply chains and oil and gas flows in the region. In this political

32 Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International Law 'Wizards of Is'*, 8 Cambridge L.J. 171-186 (2019).

33 *Ibid.*, at 10.

34 *Ibid.*, at 13.

and economic environment, a particularly vulgar and naked type of racial capitalism has since emerged as the primary governing logic in the XUAR.

In Section IV, I examine some of the ways in which racial capitalism has negatively racialized populations in the XUAR. Drawing heavily on the framework of ‘terror capitalism’ coined by anthropologist Darren Byler, I outline how various sites of carcerality and control within the XUAR contribute to the dual objectives of counter-terrorism and capital accumulation while highlighting some of the beneficiaries of these arrangements. I then discuss the implications of racial capitalism with Chinese characteristics on international labour law by examining the policy responses of both the International Labour Organization (ILO) and the US government through its Uyghur Forced Labour Prevention Act.

Finally, in Section V, I assess the extent to which foreign sanctions for forced labour and human rights abuses may push back against the logics of racial capitalism in the XUAR, as well as the conceptual and political limits of these sanctions for more egalitarian and emancipatory projects.

II. Historical development

a. ‘New Frontier’ governance: the shift to assimilationist policies and the East Turkestan independence movements of the 20th century

The region now known by the Chinese government as Xinjiang is enormous – in US terms, roughly the size of Alaska and four times the size of California. It holds a key strategic location in between Russia, China, Central Asia, and the Indian Subcontinent. Historically, different parts of the region have been contested politically – a key battleground between imperial rivals in the ‘Great Game’.³⁵ The Qing Dynasty (1644 to 1912) named this borderland ‘Xinjiang’ (literally ‘new frontier’) in 1759 after its military conquest of the Dzungar Khanate in the North. Qing forces followed this with the military subjugation of the primarily Turkic Muslim Uyghurs who inhabited the South³⁶.

The Qing enacted policies of ethnic non-integration within the primarily Muslim borderland, with the effect that non-Han populations essentially lived in isolation from the dominant Chinese ethnicity and culture³⁷. This approach favoured a hands-off approach to governance in the borderland

35 Peter Hopkirk, *THE GREAT GAME: THE STRUGGLE FOR EMPIRE IN CENTRAL ASIA*, (1st ed., 1992).

36 Wang Ke, *THE EAST TURKESTAN INDEPENDENCE MOVEMENT 1930S-1940S*, 2-5 (1st ed., 2018).

37 *Ibid*, at 9-17. For instance, imperial garrison soldiers were prohibited from interacting or intermarrying with Uyghurs. 18 ‘Han cities’ were ultimately established that were to be separate from the pre-existing ‘Muslim cities’. A permit system which served as a strict set of internal migration controls, particularly for Han Chinese who wished to come into the region for work, trade, or settlement. Provisions were also passed to forbid local residents from learning Chinese language.

regions of Mongolia, Tibet, and Muslim-majority Xinjiang to create a political 'check' on the majority Han population in the interior provinces. In 1884, the Qing drastically changed course and introduced a provincial system of governance, abolishing the pre-existing Uyghur 'beg' system of governance, allowing Han Chinese bureaucrats to serve in the highest-ranking civil and military positions, and promoting an influx of Han settler migration⁴⁰.

When the Qing collapsed in 1911, a series of Han warlords took control of Xinjiang and, despite comprising less than 10% of the population, concentrated political, military, and economic power within Han Chinese hands.⁴¹ Ethnic oppression against non-Han communities intensified at the same time that ideas around pan-Turkism and pan-Islamism were being received through the 'Uyghur Enlightenment'⁴².

By the 1930s, the unified ethnonym of Uyghur entered into common use to reflect the inhabitants of the region along largely religious (Muslim), linguistic (Uyghur), cultural, and ethno-national (Turkic) lines – a consciousness which paved the way for growing nationalist sentiment and two short lived, Soviet-backed East Turkestan Republics (ETRs). The First ETR, based Southwest in Kashgar, existed from 1933 to 1934, while the Second ETR, based in the Northwest in Ghulja (Yining), existed from 1944 to 1949.

While the First ETR only lasted 85 days, the Second ETR was a much more substantial endeavour, mobilizing all Turkic Muslim peoples in the area (including Uyghurs, Kazakhs, Uzbeks, Tatars, and Kyrgyz) and organizing its own military, police, and legal and administrative systems.⁴³ However, the Second ETR was heavily reliant on support of the Soviet Union, and when Stalin later greenlighted Chinese occupation of the region⁴⁴ and nearly all of the Second ETR's leadership was wiped out in a plane crash in Soviet territory on their way to a meeting in Beijing, the People's Liberation Army (PLA) advanced largely unopposed into the region and annexed it by the end of 1949, ending the era of formal East Turkestani statehood⁴⁵.

38 *Ibid.*, at 12-13.

39 *Ibid.*, at 5-9. 'Beg' is a turkic word roughly commensurate to 'chief'. The beg system referred to a system of high-ranking officials that were responsible for the civil administration in managing local civil administration, public order, local garrisons, judgments, taxation, agriculture, industry and commerce, education and religious affairs in Uyghur communities. The Qing empire largely continued the beg system and bestowed material benefits and land to local begs who were loyal to the Qing.

40 *Ibid.*, at 25, 37.

41 *Ibid.*

42 *Ibid.*, at 29-32.

43 *Ibid.*, at 266-267.

44 I. Kovalev, *Memorandum of conversation between Stalin and CCP Delegation*, WILSON CENTER, (Jun. 27, 1949), <https://digitalarchive.wilsoncenter.org/document/113380>.

45 Wang, *supra* note 36, at 275.

b. The Xinjiang Production and Construction Corps: settling and securing the frontier through Han migration and development policies

Established in 1954, the Xinjiang Production and Construction Corps (XPCC) is a Han-dominated (86%)⁴⁶ colonial paramilitary organization established for the tripartite purposes of development (of land and commercial activities under its purview), settlement (primarily of Han Chinese settlers to the region), and frontier security (to assist in cracking down on any challenge or threat to Chinese interests).⁴⁷The unique paramilitary structure of the Corps is a legacy of its establishment by decommissioned soldiers after the CPC's military annexation of the region.

While the XPCC was originally conceived as being self-sufficient and subsisting off an agrarian economy, the late 1990s saw massive reform and "corporatization" of the Corps. This corporatization of the XPCC marked not only a change in form but a wholesale rhetorical and material shift away from its roots in farming to a modernized and urbanized civilian corporate state seeking to attract private investment in a variety of different industries.

The XPCC is enormous in scale, with a population that has ballooned from 175,000 at its founding to 3.25 million in 2019.⁴⁸It controls 70,000 square km of land, boasting a GDP of 274.707 billion Yuan (\$40.46 billion USD)⁴⁹. Its economy has historically centered around agriculture and the production of cash crops and related products including tomatoes, ketchup, fruit, wheat, red dates, and cotton – producing 30% of China's cotton or 7% of the worldwide total⁵⁰.

The Corps exists as a parallel government (a "state within a state") to the regional XUAR government, having been promoted to equal bureaucratic status as the regional XUAR government in 1999.⁵¹This administrative structure also at times cause the XPCC and XUAR government to compete. For instance, the XUAR government has frequently blocked attempts by the XPCC to expand beyond agriculture and land development to the lucrative petrochemical and mining enterprises⁵² - a significant source of tension given that the Tarim Basin in Southern Xinjiang represents the largest oil and gas field in China with about 16 billion tons of discovered reserves⁵³.

46 Bao Yajun, *The Xinjiang Production and Construction Corps: An Insider's Perspective*,3 (Blavatnik School of Gov. working paper No.23, 2018), <https://www.bsg.ox.ac.uk/sites/default/files/2018-05/BSG-WP-2018-023.pdf>. Bao is a prominent expert on the XPCC and was commissioned by the State Council of China as a Research Fellow to study and produce reports on the XPCC and potential reforms.

47 *Ibid*, at 2.

48 Sidney Leng and Cissy Zhou, *China census: Xinjiang's population jumps 18.3 per cent over past decade as sprawling XPCC conglomerate expands operations*, SOUTH CHINA MORNING POST, (May. 12 2021, 8:15 pm), <https://www.scmp.com/economy/global-economy/article/3133228/china-census-xinjiangs-population-jumps-183-cent-over-past>.

49 Lin Xin and Yu Jincui, *Divisions of XPCC contribute to social stability, promote residents' income*, GLOBAL TIMES, (Sep. 23 2020,10:23pm) <https://www.globaltimes.cn/page/202009/1201866.shtml>.

50 *US bans cotton imports from China producer, citing "slave labour"*, AL JAZEERA, (Dec. 3 2020) <https://www.aljazeera.com/economy/2020/12/3/us-bans-cotton-imports-from-china-producer-citing-slave-labour>.

The XPCC is also an institution that advances Han colonial interests in the region.⁵⁴The primary avenue in which this is achieved is through XPCC-facilitated Han settler migration, which played a large role in total migration inflows into the XUAR. Han settler colonial migration since the PRC's annexation of the region is clear and unambiguous: between 1949 and 2008, the proportion of Han Chinese in the XUAR rose from 6.7% (220,000) to 40% (8.4 million) of the total population – which is the largest demographic change in the history of any region during the era of the PRC.⁵⁵XPCC-facilitated migration has also come in waves. Over the decades, this has included large numbers of educated youth from Shanghai, large numbers of peasants from both coastal and interior provinces,⁵⁶as well as prisoners transferred from other Chinese provinces to primarily XPCC-run prisons.⁵⁷By 1996, a full 2.3 million of the 6.4 million Han in the XUAR were XPCC members⁵⁸.

As China gradually transitioned to a market economy and later state-guided capitalism, three key reforms made in 1998 'collectively marked the start of a new phase in the way the bingtuan is imagined and deployed'.⁵⁹These were: (1) significantly diminishing the army's political control over the XPCC, (2) incorporating the XPCC, and (3) affirming XPCC courts and prosecutorial entities as official legal entities⁶⁰.

The incorporation of the XPCC resulted in the creation of 'the world's largest enterprise group'⁶¹; a corporate state that is increasingly merged with the rest of the XUAR (as XPCC operations expanded down from their historical base in the North to the Uyghur-dominated South) and domestic as well as global markets, by transforming the region into a key international source and passageway for energy resources.⁶²XPCC incorporation presaged the 'Open Up the West' (xibu da kaifa) campaign of 2000 and the accession of China to the World Trade Organization (WTO) in December 2001.

Post-incorporation, the XPCC began a series of urbanizing land grabs, establishing a number of settlement cities in the XUAR that totally controlled and inhabited by

51 Thomas Matthew James Cliff, 'Neo Oasis: *The Xinjiang Bingtuan* in the Twenty-first Century', 33 *Asian Studies Rev.* 83,83 (2009).

52 Bao, *supra* note 46, at 10.

53 CNPC makes one billion tonne oil and gas field discovery in Tarim Basin, HYDROCARBONS TECHNOLOGY, (21 June 2021), <https://www.hydrocarbons-technology.com/news/cnpc-makes-one-billion-tonne-oil-and-gas-field-discovery-in-tarim-basin/>.

54 Uyghur Human Rights Project, *The Bingtuan: China's Paramilitary Colonizing Force in East Turkestan*, (2018), <https://docs.uhrp.org/pdf/bingtuan.pdf>.

55 Alessandra Cappelletti, *SOCIO-ECONOMIC DEVELOPMENT IN XINJIANG UYGHUR AUTONOMOUS REGION* 92(1st ed., 2020).

56 *Ibid.*, at 130.

57 James D Seymour and Richard Anderson, *NEW GHOSTS, OLD GHOSTS: PRISONS AND LABOR REFORM CAMPS IN CHINA* 115(1st ed., 1998).

58 Barry Sautman, *Is Xinjiang an Internal Colony?*, 2 *Inner Asia* 239,241 (2000).

59 Cliff, *supra* note 51, at 87.

60 *Ibid.*

61 James D Seymour, *Xinjiang's Production and Construction Corps, and the Sinification of Eastern Turkestan*, 2 *Inner Asia* 171, 186 (2000).

62 *Ibid.*

Corps members and their families. Prior to incorporation, the only government approved XPCC settlement city was Shihezi, situated just northwest of the capital city of Urumqi. The XPCC was not authorized to establish another settlement city until 2004, but has since created over half a dozen cities and, according to official government documents, plans to establish around 20 new settlement cities by 2030⁶³.

As the economic reforms of the late 1990s and early 2000s accelerated, the government's focus shifted 'towards the socioeconomic security of the Han population'⁶⁴ given the potential of Han workers to foment unrest if they felt their livelihoods were being threatened by reforms. As a result, the economic, political, and cultural disenfranchisement of Uyghurs and other non-Han communities (e.g. through chronic labour market discrimination and higher poverty rates) was sidelined by the regional government. ⁶⁵This built upon the grievances that these groups had in being disproportionately profiled, targeted, and jailed through the 'Strike Hard' campaign of the 1990s to reign in the threat of "separatism" after the dissolution of the Soviet Union⁶⁶.

As we will see, developmental capitalist reforms in the XUAR beginning in the 1990s have the effect of mobilizing pre-existing social differences (cultural, religious, ethnic) onto a governmental logic which justified the expansion of Han-controlled political and economic commercial and infrastructure projects. These projects not only made significant profits for companies that set up shop in Xinjiang, but also facilitated the integration of the peripheral economy of Xinjiang with the Eastern Chinese core⁶⁷.

c. Opening up the West: one black, one white

During the 1990s and 2000s, Xinjiang was subject of a massive state-driven transformation of the region into 'a center of trade, capitalist infrastructure and agricultural development capable of further serving the needs of the nation'. ⁶⁸The focus on development of the cotton and petrochemicals industries in particular was reflected by the aphorism of *yi hei, yi bai* (one black, one white). ⁶⁹This transformation would radically change ethnoracial relations and, as it turns out, plant the seeds for racial capitalism with Chinese characteristics.

63 Bao, *supra* note 46, at 12.

64 *Ibid.*, at 88.

65 David Bachman, *Making Xinjiang safe for the Han? Contradictions and ironies of Chinese government in China's northwest in*, GOVERNING CHINA'S MULTIETHNIC FRONTIERS 155-185 (Morris Rossabi, ed., 2004).

66 Amnesty International, People's Republic of China: *Gross Violations of Human Rights in the Xinjiang Uighur Autonomous Region*, 18-22 (March 31, 1999), <https://www.amnesty.org/en/documents/asa17/018/1999/en/>.

67 Nicolas Becquelin, *Xinjiang in the Nineties*, 44 *The China J.* 65,75 (2000)..

68 *Ibid.*

69 Sautman, *supra* note 58, at 239.

The central government's plan was to 'open up Xinjiang to the world': setting up special economic zones, expanding border trade, accelerating Han settler economic migration, and pouring in state capital for infrastructure investments that would greatly expand agricultural production and the extractive industries. Infrastructure investment surged by 126% as road and rail projects commenced to connect the XUAR economy with the rest of China.⁷⁰ Key projects included the Tarim Basin-crossing Taklamakan Highway, several major oil and gas pipelines to connect Xinjiang as an artery between Eastern China and oil and gas-rich regions of Kazakhstan and Russia⁷¹, and railroad extensions from Korla to Kashgar which opened the 'Uyghur heartland to direct Han migration and Chinese commerce'⁷².

These policy goals were further consolidated in June 1999, when President Jiang Zemin announced the 'Open Up the West' campaign. This campaign connected frontier economic development with nation-building rhetoric: appealing to a civilizing imperative for the region; the rich resources lying untapped that 'wait' for the spiritual impulse of the 'Chinese nation' for their exploitation; and the ambition of the Chinese nation to 'stand up' in the international environment.⁷³ Open Up the West was announced in preparation for China's accession to the World Trade Organization (WTO) in December 2001 – milestone events that would accelerate regional economic integration and pave the way for the emergence of racial capitalism's governmental logic in the XUAR over the next two decades⁷⁴.

In particular, the campaign's rhetoric appealed to the underdevelopment of Western peripheral provinces, where there were higher levels of poverty and a higher concentration of non-Han ethnicities.⁷⁵ Yet campaign policies focused solely on broad development, resource extraction, and investment, assuming broad economic policy would lift all boats rather than directly tackle the thornier question of ethnoracial discrimination and disparity, which studies show had been increasing in the XUAR in the post-1978 era⁷⁶.

The cotton industry was a site of heated particularly dispute. As China became the world's primary manufacturer of clothing and textiles, its economy required a cheap source of domestic cotton. As a result, the state offered large financial incentives

71 Cappelletti, *supra* note 55, at 62.

72 Darren Byler, *Spirit Breaking: Uyghur Dispossession, Culture Work and Terror Capitalism in a Chinese Global City* 38 (PhD Dissertation), <https://xinjiangdocumentation.sites.olt.ubc.ca/files/2020/12/Darren-Byler-Spirit-Breaking-Uyghur-Dispossession-Culture-Work-and-Terror-Capitalism-in-a-Chinese-Global-City.pdf>.

73 Nicolas Becquelin, *Staged Development in Xinjiang*, 178 *The China Quarterly* 358,372 (2004).

74 Cliff, *supra* note 51, at 87.

75 David SG Goodman, *The Campaign to "Open up the West": National, Provincial-Level and Local Perspectives*, 178 *The China Quarterly* 319, 319-323 (2004).

76 Xiaowei Zhang, *Affirmative Action, Economic Reforms, and Han—Uyghur Variation in Job Attainment in the State Sector in Urumchi*, 202 *The China Quarterly* 344 (2010).

77 Becquelin, *supra* note 67, at 81.

for cotton farming, large-scale land reclamation, and the moving of domestic cotton mills to the XUAR. Cotton production skyrocketed as the XUAR quickly became China's leading producer of cotton by 1997.⁷⁷ These incentives also provided a pretext for authorities to reclaim land for irrigated cotton cultivation, attract further Han economic migration to the area, and expand the XPCC's economic and political influence⁷⁸.

However, despite the 'trickle-down' collective prosperity promised, Uyghurs and other non-Han natives remained structurally disenfranchised by these policies. For instance, small-scale farmers (who were disproportionately Uyghur) were required to convert multi-crop farms to meet regionally-imposed quotas for cotton. But because these farmers were forced to sell their cotton at a controlled lower fixed price, the profits were ultimately captured downstream by Han-dominated state-owned enterprises (SOEs), leading to increasing impoverishment for Uyghur farmers in the context of rising prices.⁷⁹ Meanwhile, policies such as the 'responsibility contract' granted reclaimed farmland to prospective Han farmers, putting them in direct (and often unfair) competition with non-Han Indigenous farmers by appropriating the best agricultural land and waiving contract fees for two years⁸⁰.

Similar patterns can be observed in the development of the XUAR's petrochemicals industry. In 1994, China opened the Tarim Basin to foreign investment and exploration, attracting interest from multinational oil conglomerates such as Halliburton.⁸¹ At the same time, several critical oil and gas pipelines were completed between 1993 and 1996⁸², while the opening of the West-East Gas Pipeline in 2005 that connected the Tarim Basin with Shanghai massively expanded the ability of Xinjiang to supply Eastern China with oil and gas.⁸³ By 2002, oil and gas exploitation already represented almost half of Xinjiang's revenues⁸⁴.

Yet the oil and gas boom furthered pre-existing racialized economic disparities and opportunity-hoarding. For instance, 95% of the technical workers in the massive Taklamakan Desert oil exploration project were Han Chinese.⁸⁵ Korla, the second largest city in the XUAR which was previously Uyghur-majority had, as a result of the oil boom become 70% Han Chinese by 2008 as a result of Han economic in-migration. Labour market discrimination was rife – with Han employers often stereotyping Uyghurs as 'terrorists and separatists' and to the extent that they would hire Uyghurs, confining them to low-level jobs in the oilfields⁸⁶.

Left to fester, systemic racialized disparities in the cotton and petrochemical

78 *Ibid*, at 80-82.

79 Byler, *Spirit Breaking*, *supra* note 72, at 39.

80 Becquelin, *supra* note 67, at 76. Responsibility contracts confers land-use rights to households for management of a designated parcel of rural land. Contractees are given technical assistance and supply of production inputs and agree to sell a specific amount of output to state entities, along with the payment of taxes.

81 Steven Mufson and Steve Coll, *China Offers its Oil Riches on Open Market*, THE WASHINGTON POST, (Mar. 20 1994), <https://www.washingtonpost.com/archive/politics/1994/03/20/china-offers-its-oil-riches-on-open-market/6ecc8761-baa2-4139-b170-235a32ec35a4/>.

82 Cappelletti, *supra* note 55, at 62.

83 , *West-East Gas Pipeline Project*, HYDROCARBONS TECHNOLOGY <https://www.hydrocarbons-technology.com/projects/west-east/>, (Last Visited 3 August 2021).

industries during the 90s paved the way for the acceleration of racial hierarchy-making in subsequent decades, particularly as the BRI began taking shape to secure China's central role in global commerce and trade. The BRI's ambitious infrastructure plan has placed Xinjiang in a crucial geopolitical and economic role: both as a through-point for three of its six overland economic corridors and as a crucial hub in securing China's energy interests. A closer examination of the juridical frame of the BRI, its influence on the securitization of the region, and its consolidation of Han colonial interests is thus warranted.

III. Juridical framework of the Belt and Road Initiative

In order to understand contemporary securitization and assimilation campaigns in the XUAR, it is important to understand the juridical framework (a key part of the organizational infrastructure) that enables the BRI and galvanizes the radical reconfiguration of the region's native land and people for Chinese nation-building and economic development. This framework emphasizes soft law (principles, norms, standards, or other statements of expected behaviour) over hard treaties.

Unlike the West, as an examination of the securitization and transformation of the XUAR for global trade and resource extraction reveals, the BRI is pursuing racial capitalism and economic empire in a way that does not necessarily appeal to the rule of law for legitimacy. Although the soft law infrastructure that binds the BRI together is different from Western models, it remains a legal framework which requires a political economy lens to better understand its goals and impacts.

a. BRI's objectives and the focus on soft law

Delineating the scope of the BRI for the purposes of analysis (whether legal or otherwise) can be a challenging exercise. The BRI is massive in scale - involving 70 countries and over two-thirds of the global population - and many relevant projects are not explicitly labeled as being linked to the initiative.⁸⁷ BRI projects exist along with pre-BRI or parallel initiatives to advance regional economic cooperation (e.g. Regional Comprehensive Economic Partners, Asia-Pacific Economic Cooperation, G20, and Preferential Trade and Investment Agreements)⁸⁸.

During Xi Jinping's 10-day tour of the Central Asian Republics in 2013, he announced the five stated objectives of the BRI:

84 Becquelin, *supra* note 73, at 362.

85 Barry Sautman, *Preferential policies for ethnic minorities in China: the case of Xinjiang*, 4 Nationalism & Ethnic Politics 86,86-118 (1998).

86 Jamil Anderlini, *Xinjiang oil boom fuels Uighur Resentment*, FINANCIAL TIMES, (Aug. 28 2008), <https://www.ft.com/content/163dec1c-7518-11dd-ab30-0000779fd18c>.

87 Heng Wang, *China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability*, 22 J. of Int'l Economic L. 29, 30-32 (2019).

88 *Ibid.*

- (1) Policy coordination;
- (2) Facilitation of connectivity;
- (3) Unimpeded trade across the Belt and Road;
- (4) Financial integration; and
- (5) Cultivation of people-to-people bonds⁸⁹.

From a conceptual angle, the BRI is organized as a hub-and-spoke model, with China as the hub reaching out to other BRI states through ‘hardware’ (the infrastructure and specific projects that facilitate economic integration) and ‘software’ (a loosely connected network of bilateral and multilateral agreements and mechanisms)⁹⁰.

In terms of hardware (a key part of the technical infrastructure), the BRI is comprised of several large-scale infrastructure “corridors” often consisting of some combination of highways, ports, railroads, and pipelines. These are divided into the maritime-oriented ‘road’ sea route corridors and the land-oriented economic ‘belt’ corridors. In total, there have been six proposed land-based transnational economic corridors:

- (1) The New Eurasia Land Bridge Economic Corridor;
- (2) The China-Mongolia-Russia Economic Corridor;
- (3) The China-Central Asia-West Asia Economic Corridor;
- (4) The Indochina Peninsula Economic Corridor;
- (5) The Bangladesh-China-India-Myanmar Economic Corridor; and
- (6) The China-Pakistan Economic Corridor (CPEC)⁹¹.

The software component refers to the BRI’s juridical framework: the loose network of agreements, institutions, mechanisms, and dispute resolution bodies that provide a common commercial platform for the BRI’s extensive and varying projects⁹².

Heng Wang argues that through the BRI, China is showing that its approach to international economic law deviates quite significantly from the Western approach of heavy reliance on treaty-based institutional mechanisms.⁹³ Instead, China has embraced a dual-track normative approach that maximizes flexibility by mobilizing soft law rather than legally-binding treaties wherever it can.⁹⁴ While there are no BRI-wide treaty or enforcement mechanisms, the BRI still must take account of pre-existing treaties as well as those formulated outside the BRI. As a result, ‘WTO rules arguably remain the core of the international norms applicable to BRI-related trade.’⁹⁵

89 Anna Hayes, *Interwoven ‘Destinies’: The Significance of Xinjiang to the China Dream, the Belt and Road Initiative, and the Xi Jinping Legacy*, 29 *J. of Contemporary China* 31, 35-36 (2020).

90 Heng, *supra* note 87 at 35.

91 Lutz-Christian Wolff, *Legal Responses to China’s “Belt and Road” Initiative: Necessary, Possible or Pointless Exercise?*, 29 *Transnational L. and Contemporary Problems* 249, 253 (2020).

92 Heng, *supra* note 87, at 35.

93 *Ibid.*, at 47-49.

94 *Ibid.*, at 41. As Heng states, these often take the form of co-operation agreements, ‘including joint communiques, joint statements, agreements, a MOA, MOUs, a letter of intent, initiatives, and consensuses.’

95 *Ibid.*, at 42.

In terms of dispute resolution, China has made efforts to cement its principal role as the overarching ‘hub’ for the BRI. As part of the BRI infrastructure, the Supreme People’s Court launched two international commercial courts – one in Shenzhen and one in Xi’an – under the banner of China International Commercial Court (CICC). The CICC generally hears international commercial cases which have a substantive connection to China, including cases that have a ‘nationwide significant impact’, while restricting representation to Chinese law-qualified lawyers.⁹⁶ It has since heard dozens of cases, issued operational documents and procedural rules, and expanded to include ‘one-stop shop’ services including commercial mediation.⁹⁷ As noted by Lance Ang, the CICC plays a strategic role in safeguarding the interests of Chinese firms, particularly its SOEs, and relocating ‘the locus of China-related (and Belt & Road) dispute resolution to China.’⁹⁸

Overall, the juridical structure of the BRI is characterized by ‘maximum flexibility’. Neither China nor any other BRI state has enacted any hard law with specific BRI relevance.⁹⁹ Rather, the BRI software is a loosely connected network of new or existing bilateral and multilateral mechanisms, ‘based on a series of...interconnected bilateral trade pacts and partnerships.’¹⁰⁰ Thus far, labour, human rights, and environmental protections have not been prioritized within this loose network of agreements made between China and other BRI states¹⁰¹.

Like Western-style international economic integration initiatives, free trade and financial integration remain explicit BRI goals. However, the BRI eschews a top-down, hard law approach in favour of a decentralized approach involving soft law, bilateral agreements, and ad hoc institutions, thereby retaining greater institutional flexibility through political relationships. Structurally, the Chinese government ensures that its own domestic political and economic priorities are always protected by reinforcing its geostrategic position as the ‘hub’ of the BRI and bringing BRI-related dispute resolution ‘in-house’ through the CICC. This flexible juridical framework helps the Chinese government pursue both the BRI’s stated objectives and its own (unstated) geostrategic goals¹⁰², many of which rely on the XUAR as a key fulcrum.

96 Lance Ang, *International Commercial Courts and the Interplay Between Realism and Institutionalism: A Look at China and Singapore*, (14 November 2019), <https://harvardilj.org/2020/03/international-commercial-courts-and-the-interplay-between-realism-and-institutionalism-a-look-at-china-and-singapore/>.

97 Liu Tingmei, *The China International Commercial Court (CICC) in 2018*, THE CHINA INTERNATIONAL COMMERCIAL COURT (22 July 2018), <http://cicc.court.gov.cn/html/1/219/208/209/1316.html#>.

98 Ang, *supra* note 96.

99 Wolff, *supra* note 91, at 266.

100 Wade Shepard, *Why The Ambiguity of China’s Belt And Road Initiative Is Perhaps Its Biggest Strength*, FORBES (Oct. 19, 2017, 12:06am), <https://www.forbes.com/sites/wadeshepard/2017/10/19/what-chinas-belt-and-road-initiative-is-really-all-about/>.

101 See Aaron Halegua, *Where is the Belt and Road Initiative taking international labour rights? An examination of workers abuse by Chinese firms in Saipan*, in THE BELT AND ROAD INITIATIVE AND GLOBAL GOVERNANCE, 225 (Maria A Carrai, Jean-Christophe Defraigne, and Jan Wouters, eds., 2020).

102 These include, *inter alia*, outmaneuvering the US ‘Pivot to Asia’, energy security, regional security, advancing its economic power and military footprint, and eliminating ‘separatism, extremism, and terrorism’. See Ume Farwa, *Belt and Road Initiative and China’s Strategic Culture*, 38 Strategic Studies 40 (2018).

b. The role of the XUAR and securitization of BRI investments

Xinjiang has outsized geopolitical importance for China within the BRI due to its central location and abundance of raw materials. At least three of the six overland economic corridors pass through the XUAR: the New Eurasia Land Bridge Economic Corridor (including railroads through Urumqi on the way to Europe), the China-Central Asia-West Asia Economic Corridor (attaching to the same railroad before splitting Southwest towards the Caspian Sea and Turkey), and CPEC (which includes highways, rail, and an oil pipeline to the port of Gwadar in Pakistan)¹⁰³.

As a result, the XUAR has seen a massive economic transformation to align itself to the BRI's specific objectives and to connect the Chinese economy to new markets in Russia; Central, West, and South Asia; and Europe. Within this new international trade infrastructure network, the XUAR is the gateway for materials and goods transported overland. Further, the existing pipeline infrastructure that connects Eastern China with oil and gas in Xinjiang can be further extended to oil rich fields in Kazakhstan and Russia, as well as through CPEC to the Indian Ocean to receive oil imports from the Gulf¹⁰⁴.

The push to economically integrate Xinjiang as a key global trade and energy hub for the BRI while simultaneously subjugating native resistance to the development agenda required the creation of a massive security industrial complex – the hallmark of Chen Quanguo's administration. This security industrial complex and its corresponding physical and digital investments must also be seen as an indivisible part of the BRI's technical infrastructure which demand analysis.

Yet it would be inaccurate to see the BRI's influence in the XUAR as a rupture as opposed to a continuation and acceleration of economic liberalization policies and subsequent racialized displacement which pre-dated the BRI. For instance, after Kashgar was made a Special Economic Zone (SEZ) in 2010, the Old City of Kashgar was largely destroyed to make way for economic modernization. This project was executed under the pretenses of the government's "Kashgar Dangerous House Reform Program" in order to ensure residences were "earthquake-proof".¹⁰⁵ The program resulted in the forced relocation of some 220,000 Uyghur residents of the central districts to apartments built on the outskirts of the city. As key cities such as Urumqi¹⁰⁶ and Kashgar¹⁰⁷ are transformed into trade and investment hubs by

103 Ben Derudder, Xingjian Liu, Charles Kunaka, *Connectivity Along Overland Corridors of the Belt and Road Initiative* (October 2018), 6 MTI Global Practice Discussion Paper 10-11. <https://documents1.worldbank.org/curated/pt/264651538637972468/pdf/Connectivity-Along-Overland-Corridors-of-the-Belt-and-Road-Initiative.pdf>,

104 Rebecca Warren, *Xinjiang and the Belt and Road Initiative*, THE STRATEGY BRIDGE, (Jun. 17, 2019), <https://thestrategybridge.org/the-bridge/2019/6/17/xinjiang-and-the-belt-and-road-initiative>.

105 Michael Clarke, *Beijing's March West: Opportunities and Challenges for China's Eurasian Pivot*, 60 *Orbis* 296, 305 (2016).

106 Fernando Burgés, Annie Simm, Isabelle Cooper, *A Tale of Three Ports: The Impact of the Belt and Road Initiative on Unrepresented Peoples in Pakistan and China*, UNPO (December 2019), 15-20 <https://unpo.org/downloads/2593.pdf>.

107 Hayes, *supra* note 89, at 39.

the Chinese government, these changes are conducted in a top-down manner that exacerbates pre-existing ethnoracial inequality between Han and non-Han. The post-2016 system of racialized policing, mass incarceration and “surplus labour” programs thus builds upon prior policy directions in prior decades by eliminating the Indigenous threat while maximizing profits for both private business and the Chinese state.

These large-scale transformative policies in Xinjiang could not have been implemented smoothly without the consolidation and deployment of the social infrastructure of global anti-Muslim racism. In the post-9/11 era ‘the tying of the global sphere into Xinjiang has made it more convenient for the security services to reduce the Uyghurs identity as one prone to religious radicalisation and terrorism’¹⁰⁸. Indeed, the rhetoric of the ‘Global War on Terror’ has been deployed by local authorities to frame anti-colonial struggles as terrorism and thus an endemic security risk that threatens global supply chains and oil and gas flows in the region. After the 2009 Urumqi Riots and 2014 Kunming knife attacks¹⁰⁹, Xi Jinping pledged to implement a ‘strike hard’ strategy through a ‘People’s War on Terror’ in Xinjiang. Notably, the policy goal of eliminating terrorism was explicitly tied to eliminating separatism and extremism under the framework of the ‘Three Evils’.¹¹⁰ Understanding China’s combined policy interests in combating terrorism, separatism, and extremism allows us to better understand the form in which the state socially constructs the ‘Other’: as a racialized Muslim that is a threat because of their radical religious piety, resistance to assimilation, and Indigenous claims to the land that poses a direct threat to Chinese territorial claims and sovereignty.

Within this political and economic environment, a dynamic racialized security industrial complex has emerged in the XUAR to stamp out the Three Evils and secure BRI investments. This has benefited a slew of corporate interests partnering with the state – from AI giants to private security contractors, tourism companies¹¹¹ to manufacturing firms exploiting carceral labour. Anthropologist Darren Byler calls this ‘terror capitalism’ – a particular branch of counterinsurgency-informed racial capitalism – which helps us understand the processes of exploitation and dispossession in which ethnoracial difference is produced and exaggerated to frame certain groups as terrorists and pre-criminals.¹¹² Terror capitalism provides the ideological basis and material incentives by which populations flagged at risk for ‘terror’ and ‘extremism’

108 Burgés, et al, *supra* note 106, at 17.

109 *US says Kunming attack is “act of terrorism”*, BBC NEWS, (Mar. 4, 2014), <https://www.bbc.com/news/world-asia-china-26414018>.

110 Joanna Smith Finley, Security, *Insecurity and Conflict in Contemporary Xinjiang: has PRC Counter-terrorism evolved into State Terror?*, 38 *Central Asian Survey* 1, 2 (2019).

111 For example, in a China National Tourism Administration bulletin, the authorities stress the necessity of tourism for the realization of the BRI, as well as the political task of making Xinjiang ‘safe’ for Han tourists as part of a program called ‘Tourism as Xinjiang Aid’. Guldana Salimjan, ‘Camp Land: Settler Ecotourism and Kazakh Removal in Contemporary Xinjiang’ in *Xinjiang Year Zero*, *supra* note 31, at 152.

112 Darren Byler, *TERROR CAPITALISM: UYGHUR DISPOSSESSION AND MASCULINITY IN A CHINESE CITY* (1st ed., 2022).

113 Byler, *Spirit Breaking*, *supra* note 72, at 27.

to become sites of investment where targeted populations can be ‘subjected to experiments in policing, mass internment and indoctrination processes’ in a constant state of exception where even the most basic of rights do not apply¹¹³.

IV. Terror capitalism: control and exploitation of Muslims under counter-terrorism

a. The transnational counter-terrorism order and racialized Muslims in the XUAR

Though the BRI may have been the immediate impetus for its rapid dissemination in the XUAR, the technologies of terror capitalism have flourished in no small part due to the turn of international law towards the Global War on Terror, which allows for warfare to be waged indefinitely against rogue populations who are considered ‘unlawful combatants’ for whom both the law of war and international human rights do not effectively apply.¹¹⁴ Since 9/11, a vast institutional, legal, and normative architecture of counter-terrorism has been proliferated at the international level. This hegemonic order can be traced back to the 2001 passing of UN Security Council (UNSC) Resolution 1373, which affirmed terrorism as a threat to international peace and security (therefore vesting the UNSC with Chapter VII powers to effectively legislate for all UN members) and created the Counter-Terrorism Committee (CTC) to monitor and enforce compliance with the Resolution¹¹⁵.

For the Uyghurs, ironically, their ‘terrorist’ branding in international law was secured by the US within the UN counter-terrorism sanctions infrastructure. On September 11, 2002, as quid pro quo for tacit Chinese support for the invasion of Iraq, the US jointly with Kyrgyzstan, Afghanistan, and China asked the UN to impose sanctions on a nebulous group known as the East Turkestan Islamic Movement (ETIM) as a ‘terrorist organization’ under UNSC Resolutions 1276 and 1390 – a guilt-by-association that continues to plague Uyghur people ‘as the PRC claims its mass internment of Uyghurs is an appropriate response to a serious terrorist threat’.¹¹⁶ Relatedly, UNSC Resolution 1373 also obliged all states to promulgate domestic criminal legislation relating to terrorist activities and drew attention to the important role of deradicalization within carceral settings.¹¹⁷ China translated this into passing a new Counter-terrorism Law and associated Religious Affairs Regulations in 2015, codifying many of the anti-Islamic and assimilationist policies already being implemented in the XUAR¹¹⁸.

114 Mary Ellen O’Connell, *The Legal Case Against the Global War on Terror*, 36 Case Western L. J. of Int’l. L. 349 (2004).

115 United Nations Security Council (UNSC) Resolution 1373, 28 September 2001, UN Doc S/RES/1373.

116 Sean Roberts, *THE WAR ON THE UYGHURS: CHINA’S INTERNAL CAMPAIGN AGAINST A MUSLIM MINORITY*, 79-80(1st ed., 2020).

117 Fiona De Londras, *THE PRACTICE AND PROBLEMS OF TRANSNATIONAL COUNTER-TERRORISM*, 69(1st ed., 2022).

In light of these international legal norms, the Chinese government has responded with indignation and incredulity to external criticisms of its People's War on Terror, maintaining that they are only following international norms of counterextremism and de-radicalization¹¹⁹. Indeed, some Chinese experts have argued that China's approach is not only justified, but a more thorough and effective version of Countering Violent Extremism (CVE) programs through installing pre-emptive measures that identify, isolate, and rehabilitate potential terrorists.¹²⁰ This points to the need for a more robust critique of these policies that extend beyond proportionality exercises; instead targeting the very underpinnings of counterterrorism logics, the transnational racialization of Muslims, and their manifestations within global capitalist relations. The rest of this section takes a deeper dive into aspects of the emergent racialized security industrial complex in the XUAR.

b. Three sites of discriminatory carceral control and surveillance

Three interrelated sites of carcerality are enabled by terror capitalism which serve as high-risk laboratories by which venture capital policing and surveillance technologies can be tested and improved upon in the XUAR: (1) an open-air predictive grid policing system, (2) a system of extrajudicial detention camps (euphemistically referred to by the government as 're-education' or 'vocational' centres), and (3) an expanding formal prison system. These physical and digital infrastructures work together to secure BRI investments, develop and improve AI surveillance tech, produce and manage a hyper-exploitable labour force, and advance Chinese ethnonationalist assimilatory policy.

First, the XUAR model of open-air predictive policing for racialized communities uses past data through specific indicia to assess risk and whether police intervention and detention for re-education is warranted. In some locales, assessments are made through a system of pre-criminal categories of risk, including growing beards, whether the subject has travelled to a list of 26 'sensitive' countries with majority Muslim populations¹²¹, or whether the subject has quit smoking and drinking¹²².

In terms of spatial geography, the XUAR government has implemented a 'grid management' system of predictive policing building upon the system that Chen Quanguo administered during his time as CPC Party Secretary of Tibet.¹²³ In urban areas, a multi-layered dragnet is installed with housing organized within the jurisdiction

118 Roberts, *supra* note 116, at 178.

119 Brophy, *supra* note 31, at 51.

120 *Ibid.*

121 Maya Wang, *Break Their Lineage, Break Their Roots*, HUMAN RIGHTS WATCH (Apr. 19, 2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting>.

122 Yael Grauer, *Revealed: Massive Chinese Police Database: Millions of Leaked Police Files Detail Suffocating Surveillance of China's Uyghur Minority*, THE INTERCEPT (Jan. 29, 2021 2:00 am), <https://theintercept.com/2021/01/29/china-uyghur-muslim-surveillance-police/>.

123 Human Rights Watch, *supra* note 6.

of a grid region that is managed by the combined jurisdiction of a 'neighbourhood committee' and a local police station.¹²⁴ These localized administrative hubs manage face-to-face assessments, helps organize party cadre surveillance in the homes of Turkic¹²⁵ Muslims, processes city resident permits, and sends recommendations for detention up the chain of command¹²⁶.

People's Convenience Police Stations stationed at regular intersections form another key part of the policing dragnet and act as strategic hubs for facial recognition cameras designed to notify authorities as soon as suspects tagged as 'persons of interest' (mostly Uyghur men) stray more than 300 meters from their homes.¹²⁷ Convenience Police Stations can coordinate with neighbourhood committees and move quickly against suspects identified as high-risk.

The impact of this dragnet and its systemic inculcation of racial profiling is a sort of stop and frisk practice on steroids. As Grose and Byler write: 'officers monitor their station's cameras and conduct spot checks of IDs and smartphones of young Uyghurs. They stop pedestrians and cars, looking for people who do not have a legal right to be in the city or are violating religious regulations. They look for people registered in rural villages and who lack work-authorization documents. They also look for signs of Islamic piety in both the appearance of the young Uyghurs and on their phones¹²⁸.'

Second, for those flagged as high-risk by the predictive policing system, they can be brought to an expansive system of extrajudicial 'vocational/re-education' detention camps. The camps share key features: they are separate from the formal criminal justice process, they have a forced assimilation/political indoctrination component, and they form a camp-to-factory pipeline that produces easily exploitable racialized surplus labour.

In order to build this system, the XUAR government embarked on a massive carceral construction campaign starting in 2018 with 268 verified newly constructed detention facilities.¹²⁹ Several of these facilities are large enough to accommodate at least 10,000 prisoners each. The majority of the newly built detention camps resemble permanent, high-security prisons, with watchtowers, internal fencing, and thick perimeter walls¹³⁰.

124 Sarah Tynen, *I was in China doing research when I saw my Uighur friends disappear*, THE CONVERSATION <https://theconversation.com/i-was-in-china-doing-research-when-i-saw-my-uighur-friends-disappear-127166> (last visited Mar. 9, 2020).

125 *China: Visiting Officials Occupy Homes in Muslim Region*, HUMAN RIGHTS WATCH (May 13, 2018 8:00pm), <https://www.hrw.org/news/2018/05/13/china-visiting-officials-occupy-homes-muslim-region>.

126 Tynen, *supra* note 124.

127 Timothy Grose and Darren Byler, *China's Surveillance Laboratory*, DISSENT MAGAZINE (31 October 2018), https://www.dissentmagazine.org/online_articles/chinas-surveillance-laboratory.

128 *Ibid.*

129 A collaborative satellite imagery project between BuzzFeed News, Open Technology Fund, Pulitzer Center, and the Eyebeam Center for the Future Journalism verified a total of 268 newly built detention compounds scattered around across the region: 92 of which were verified by government procurement documents and other research and 176 verified by satellite imagery. Megha Rajagopalan, Alison Killing, Christo Buschek, *China Secretly Built A Vast New Infrastructure To Imprison Muslims*, BUZZFEED NEWS, (Aug. 27, 2020), <https://www.buzzfeednews.com/article/meghara/china-new-internment-camps-xinjiang-uighurs-muslims>.

130 *Ibid.*

The 're-educational' component of the camps reveal the underlying settler colonial logics of forced assimilation, family separation, and coercive reproductive control. At its core,¹³¹ Indigenous knowledge, religion, culture, and lifeways in the XUAR are linked to claims of political self-determination which directly threaten the Han settler colonial project. Re-education camps therefore function to forcibly assimilate primarily Turkic Muslim subjects and eradicate 'ideological viruses'¹³². While in re-education, detainees are required to learn Mandarin Chinese, receive classes in 'manner education', sing the national anthem and other CPC songs, and are prohibited and punished for practicing Islam or otherwise demonstrating pious behaviour¹³³.

Since 2018, Chinese government authorities have pivoted from denying the existence of the extrajudicial detention camps to justifying and rationalizing them. For instance, the Chinese Consulate in New York stated that the detention facilities were necessary to combat 'violent terrorism and separatism', emphasizing the need to 'root out extreme thoughts, enhance the rule of law awareness through education, improve vocational skills and create employment opportunities'. Revealingly, Chinese officials also explicitly linked these policies to Countering Violent Extremism (CVE) programs in the US and the UK¹³⁴.

Third, terror capitalism has reinvigorated and greatly expanded the formal prison system in the XUAR which runs in parallel with the extrajudicial re-education detention system. Government statistics between 2016 and 2017 show that arrests in the XUAR surged by 731% while serious criminal sentences of 5 years imprisonment or more similarly increased by 965%.¹³⁵ As international pressure and journalistic scrutiny mounted against the extrajudicial re-education camps, concerted efforts were made by state authorities to consolidate the camp system into the legalized system of formal criminal justice and mass incarceration, with re-education camp detainees given lengthy criminal sentences and siphoned into the prison system or 'released' to residential surveillance and coerced job placements¹³⁶.

This trend towards lengthy criminal formalization is supported by analyses of testimonies from Uyghur and Kazakh relatives of detainees, which showed a shift

131 Dale Kang, *Drop in Xinjiang birthrate largest in recent history: report*, ASSOCIATED PRESS (May 12, 2021), <https://apnews.com/article/beijing-china-race-and-ethnicity-health-religion-5aab6b4b99263b535ff1d0e9ae890b8f>.

132 "Eradicating Ideological Viruses": *China's Campaign of Repression Against Xinjiang's Muslims*, HUMAN RIGHTS WATCH, (Sept. 9, 2018), <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs>.

133 *Ibid.*

134 *Ibid.*

135 Dale Kang, *Room for 10,000: Inside China's largest detention center*, ASSOCIATED PRESS, (Jul. 22, 2021), Associated Press, <https://apnews.com/article/business-religion-china-only-on-ap-f89c20645e69208a416c64d229c072de>.

136 Gene A Bunin, *From camps to prisons: Xinjiang's next great human rights catastrophe*, ART OF LIFE IN CENTRAL ASIA (Oct. 5 2019), <https://livingotherwise.com/2019/10/05/from-camps-to-prisons-xinjiangs-next-great-human-rights-catastrophe-by-gene-a-bunin/>.

137 Gene A Bunin, *The Elephant in the XUAR: I. Entire families sentenced*, THE ART OF LIFE IN CENTRAL ASIA, (Dec. 9 2020), <https://livingotherwise.com/2020/12/09/the-elephant-in-the-xuar-i-entire-families-sentenced/>.

towards arbitrary and disproportionately lengthy criminal sentences after 2019.¹³⁷ Direct testimonials of ex-detainees have shown that in certain cases, re-education camp detainees are assigned prison sentences in ‘open-court sessions’ inside the extrajudicial camps.¹³⁸ Some re-education camps have been smoothly converted to formal detention facilities. This includes the XUAR’s largest facility, the Urumqi No. 3 Detention Center in Dabancheng, which has appeared to simply change its name from the Urumqi Vocational Skills Education and Training Center in 2019. The Urumqi No. 3 Detention Center currently functions as an enormous remand facility for pre-trial detention for over 10,000 inmates¹³⁹.

Unsurprisingly, within the formal criminal justice system, racially disproportionate charging and sentencing of Turkic Muslim populations in the XUAR is systemic and is mobilized by a commonly espoused racial imaginary¹⁴⁰ of a devoutly religious Muslim male separatist. An analysis of criminal sentences for Kazakhs in the XUAR show that over 90% were men and 75% were charges on religious grounds.¹⁴¹ Behaviours such as praying, attending religious gatherings not approved by the state, studying religion, and expounding scripture have attracted criminal charges¹⁴² and harsh sentences averaging well over 10 years in prison.¹⁴³ In May 2022, a data leak of more than 10,000 Uyghur prisoner names from Konasheher (Shufu) county in Southwest Xinjiang revealed that nearly 1 in 25 people from the country were sentenced to terrorism-related charges – a figure that would rank among the highest imprisonment rates in the world. The average imprisonment term of those named was nine years in jail. Notably, the list does not include convictions for more typically criminal offenses such as theft, drug crimes, or assault, meaning that the total incarceration rate is certainly much higher.¹⁴⁴ However, the turn towards a legalized nature of abuses in the criminal legal system, mass incarceration, and convict labour seems to have somewhat muted international attention/concern, particularly from Western nations like the United States, which employ its own massive carceral regime and Islamophobic and carceral counter-terrorism strategies¹⁴⁵.

138 Bunin, *supra* note 136.

139 Kang, *supra* note 135.

140 For a detailed account of the racial imaginary, see Kendall Thomas, *Envisioning Abolition: Sex, Citizenship, and the Racial Imaginary of the Killing State* in *SENSIBLE POLITICS: THE VISUAL CULTURAL OF NONGOVERNMENTAL ACTIVISM* 272 (Meg McLagan and Yates McKee, eds., 2012).

141 Bunin, *supra* note 136.

142 Gene A Bunin, *The Elephant in the XUAR: III. “In accordance with the law”, THE ART OF LIFE IN CENTRAL ASIA*, (Apr. 19, 2021), <https://livingotherwise.com/2021/04/19/the-elephant-in-the-xuar-iii-in-accordance-with-the-law/>.

143 Bunin, *supra* note 137.

144 Huizhong Wu and Dake Kang, *Uyghur county in China has highest prison rate in the world*, ASSOCIATED PRESS (May 16, 2022), <https://apnews.com/article/china-terrorism-c90fcc319775278d91da70e8bbe7c226>.

145 Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (1st ed., 2012).

c. Production of data capital and a racialized surplus labour force

Two specific types of capital are produced by the security industrial complex inherent to terror capitalism: data and racialized surplus labour.

First, within the high-tech, intensely carceral space of Xinjiang, data is converted into capital through several interrelated processes. An infrastructure of policing, surveillance, and carceral technologies must first be installed within a particular area. To achieve this, the XUAR government has issued lucrative contracts to private companies to develop and implement these technologies, including dozens of procurement bids to construct new detention facilities that were tendered beginning in March 2017.¹⁴⁶ Some of the most prominent private military and security contractors in the world have made investments in this carceral infrastructure. For instance, Frontier Services Group, chaired by former Blackwater founder Erik Prince, announced in 2018 that it was providing construction services and building related ‘training facilities’ and ‘security equipment’ in the XUAR¹⁴⁷, which include private anti-terrorism training schools such as the school built and operated in Kashgar Caohu industrial Park¹⁴⁸.

After this hard infrastructure is built, a venture capitalist approach is taken to data-collection programs that use digital forensics, image and face recognition, biodata collection (facilitated by official policies such as ‘Physicals for All’¹⁴⁹), and language recognition to create a highly detailed base dataset from the millions of Turkic Muslims in the area.¹⁵⁰ This ever-growing base dataset is then used by private companies to improve digital surveillance and AI-enabled tech, allowing them to sell retail and turnkey versions of their products.¹⁵¹ By successfully situating entire Turkic Muslim populations as proto-terrorist populations, basic privacy rights can be collectively stripped away; a significant competitive advantage for Chinese AI companies whose products rely so heavily on intimately detailed datasets.

AI giants such as Hikvision, Dahua Technology, IFLYTEK, Sense Time, and Megvii all have made significant investments in the digital surveillance and control

146 Adrian Zenz, “Thoroughly reforming them towards a healthy heart attitude”: China’s political re-education campaign in Xinjiang, 38 *Central Asian Survey* 102, 102-128 (2019).

147 Seth Hettena, *Erik Prince’s Private Wars*, ROLLING STONE, (Oct. 25, 2020), <https://www.rollingstone.com/politics/politics-features/erik-prince-libya-blackwater-roger-stone-trump-2020-election-1077089/>.

148 Agence France-Presse, *Blackwater founder’s Hong Kong firm signs Xinjiang training camp deal*, THE GUARDIAN, (Feb. 1, 2019), 9:20 pm <https://www.theguardian.com/world/2019/feb/01/blackwater-founder-erik-prince-to-build-training-camp-in-chinas-xinjiang>.

149 *China: Minority Region Collects DNA from Millions*, HUMAN RIGHTS WATCH, (Dec. 13, 2017), <https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions>.

150 Darren Byler, *From Xinjiang to Mississippi: Terror Capitalism, Labour and Surveillance*, TRANSNATIONAL INSTITUTE: STATE OF POWER (May 2021), <https://longreads.tni.org/stateofpower/from-xinjiang-to-mississippi-terror-capitalism-labour-and-surveillance>.

151 Ross Andersen, *The Panopticon is already here*, THE ATLANTIC (Sept. 2020), <https://www.theatlantic.com/magazine/archive/2020/09/china-ai-surveillance/614197/>.

152 Catherine Shu, *Eight Chinese tech firms placed on US Entity List for their role in human rights violations against Muslim minority groups*, TED CRUNCH, (Oct. 8, 2019 1:37 am), <https://techcrunch.com/2019/10/07/eight-chinese-tech-firms-placed-on-u-s-entity-list-for-their-role-in-human-rights-violations-against-muslim-minority-groups/>.

technologies for law enforcement in the XUAR¹⁵² including developing algorithms that can differentiate and target subjects explicitly by race. Hikvision for instance, marketed video recognition technology that allows for the analysis of the subject's ethnicity (e.g. Uyghur or Han) and skin colour (e.g. white, yellow, black) with an accuracy rate of no less than 90%.¹⁵³ Another company, Cloudwalk, marketed a facial recognition product that could 'recognize Uighurs, Tibetan, or other sensitive peoples,' boasting that 'if one Uighur lives in a neighborhood, and within 20 days six Uighurs appear, it immediately sends alarms so that law enforcement personnel can respond'¹⁵⁴.

Many of these AI-enabled digital surveillance technologies that use the XUAR and its populations as a testing and development lab are now being exported to many governments around the world, particularly in the Global South. These include CloudWalk's contract with the Zimbabwean government to install a large-scale facial recognition program to support policing throughout the country, and which Cloudwalk hopes will improve the accuracy of their technologies by gaining access to a large Black population.¹⁵⁵ The Kampala police in Uganda have also procured CCTV AI and facial recognition technologies from Huawei, raising local concerns about unjustified surveillance, overreaching police powers, and lack of accountability¹⁵⁶.

Second, terror capitalism allows for the production of a racialized surplus labour force that can be hyper-exploited without a corresponding threat of integration and solidarity with mainstream labour grievances. Byler argues that one of the key features of the People's War on Terror was 'a broader process of state-mandated proletarianization of Uyghurs across the region'.¹⁵⁷ The re-education camps themselves have been described by the Xinjiang Reform and Development Commission as the 'carrier' of 'economic growth'¹⁵⁸, which has manifested in a camp-to-factory pipeline built into the very carceral architecture itself. For instance, a 2020 investigative report found that at least 135 newly built detention compounds in the XUAR also contained factories¹⁵⁹.

As with the open-air predictive policing and surveillance infrastructure, these factories also feature systems that use ID checkpoints and smart camera systems to track workers, thereby exacerbating the level of control that employers hold. As

153 Charles Rollet, *Hikvision Markets Uyghur Ethnicity Analytics, Now Covers Up*, IPVM, (Nov. 11, 2019, 9:15am), <https://ipvm.com/reports/hikvision-uyghur>.

154 Paul Mozur, *One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority*, NEW YORK TIMES (Apr. 14, 2019), <https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html>.

155 Lynsey Chutel, *China is exporting facial recognition software to Africa, expanding its vast database*, QUARTZ AFRICA (May 25, 2018), <https://qz.com/africa/1287675/china-is-exporting-facial-recognition-to-africa-ensuring-ai-dominance-through-diversity/>.

156 Bulelani Jili, *The Rise of Chinese Surveillance Technology in Africa*, ELECTRONIC PRIVACY INFORMATION CENTER (May 31, 2022), <https://epic.org/the-rise-of-chinese-surveillance-technology-in-africa/>.

157 Byler, *supra* note 150.

158 *Xinjiang Uyghur Autonomous Region Development and Reform Commission*, *supra* note 2.

159 Alison Killing and Megha Rajagopalan, *We Found the Factories Inside China's Mass Internment Camps*, BUZZFEED NEWS, (Dec. 28, 2020) https://www.buzzfeednews.com/article/alison_killing/xinjiang-camps-china-factories-forced-labor.

Byler summarizes: '[t]he information infrastructure system – smartphone tracking, checkpoints, face scans and so on – along with the fear of arbitrary detention, a form of state terror – held Uyghurs and Kazakhs in place, ensuring a docile workforce, and creating endemic conditions of unfreedom.'¹⁶⁰ Speaking on these unfree carceral labour policies, XUAR Chairman Shohrat boasted that re-education camp 'graduates' who completed their re-education terms would be placed in jobs with 'settled enterprises'¹⁶¹.

In addition to the direct camp-to-factory pipeline, the government has enacted massive racialized surplus labour transfer programs, with 2.6 million 'surplus rural workers' placed through state-sponsored relocation programs in 2019; 1.65 million of whom resided in Southern Xinjiang.¹⁶² Local governments are directed to assess each non-Han person identified as a surplus labourer within a quantitative point system, while categorizing them either as in need of training or ready to be sent directly to work. Non-cooperation with the labour placement scheme results in a deduction of points and risk of detention, while cooperation could be used to improve family member scores and hasten detained relatives' release¹⁶³.

Companies in various sectors are incentivized to move to Xinjiang and participate in these schemes through a variety of state subsidies.¹⁶⁴ Under the 'Industrial Xinjiang Aid' scheme, companies can participate either by opening up factories within the XUAR or hiring Uyghur and other Turkic Muslim workers in factories out-of-province through labour transfer schemes.¹⁶⁵ Global supply chains for a large variety of products are implicated under these scheme including solar panels, garments, textiles, electronics, auto parts, appliances, medical and health products, foods, construction materials, and semiconductors – an economic ordering of unfree labour directly facilitated by free trade agreements under the BRI.¹⁶⁶ The ultimate benefactors of this structurally produced unfree labour are large multinational corporations – many situated in the West such as Apple, BMW, Gap, Nike, and Volkswagen. Although outside the direct scope of this paper, the urgency to undertake a more detailed racial capitalism analysis within specific sectors and supply chains is evident.

160 Byler, *supra* note 150.

161 Laura T Murphy and Nyrola Elima, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, (2021), at 10, <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d360ffab-40cc-4d83-8b8b-a8bd503286a3>

162 *Ibid.*

163 *Ibid.*, at 10-11.

164 *Ibid.*, at 16.

165 Vicky Xiuzhong, *Uyghurs for sale: "Re-education", forced labour and surveillance beyond Xinjiang*, 2020, Australian Strategic Policy Institute International Cyber Policy Centre, at 12-13, <https://www.aspi.org.au/report/uyghurs-sale>

166 *Ibid.*, at Appendix.

167 International Labour Organization, *Application of International Labour Standards 2022: Report of the Committee of Experts on the Application of Conventions and Recommendations*, 514-521 [ILO Report 2022], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf

168 *Ibid.*, at 515.

169 *Ibid.*

d. Implications of Chinese racial capitalism on the international law of forced labour

Terror capitalism's production of a massive racialized, cheap, and disposable labour pool in the XUAR has attracted questions as to potential serious violations of international labour law. In the 2022 International Labour Organization (ILO)'s Committee of Experts' Report on the Application of Conventions and Recommendations, the Committee prepared a robust analysis on China's compliance with the ILO Discrimination (Employment and Occupation) Convention (No. 111)¹⁶⁷.

In the report, the Committee notes observations from the International Trade Union Confederation (ITUC) around "the extensive use of forced labour of the Uyghur and other Turkic and/or Muslim minorities for agriculture and industrial activities throughout the [XUAR]."¹⁶⁸ It also notes with concern the presence of direct prison labour (particularly in cotton, textiles, apparel, and footwear), the integration of assimilation and work discipline programs within re-education camps, and the broader Xinjiang Aid labour transfer schemes to factories in Eastern and Central China.¹⁶⁹ The Report also outlines the government's justifications for their vocational camp and labour transfer policies: economic development, poverty alleviation, increasing "language ability", enhancing "employability", opposing "extremism", and actively guiding "religions to adapt to the socialist society so that religious believers may love their country and compatriots."¹⁷⁰

Notably, the Committee of Experts' comments did not shy away from a meaningful analysis of race in the context of labour discrimination in the XUAR. It emphasized that the Convention definition of "race" included "any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics or national or ethnic origin".¹⁷¹ This definition of race is functional and echoes Stuart Hall's analysis of the shifting and blended dynamics of the 'biological' and 'cultural' logics of race¹⁷², which is particularly crucial to understanding the modalities of anti-Muslim racism in context. Aside from direct extrajudicial detention and forced ideological conversion facilitated by the government, the Committee called on the government to repeal provisions imposing similar 'de-radicalization' duties upon both enterprises and trade unions – extending the reach of racial discrimination in employment and labour¹⁷³.

Finally, the Committee's comments called attention to the mutually reinforcing relationship between a zealous counter-terrorism legal regime (as reflected in China's 2015 Counter-terrorism Law and associated Religious Affairs Regulations as well as the 2016 XUAR Implement Measures of the Counter-Terrorism Law) and racialization:

170 *Ibid.*, at 516-518.

171 *Ibid.*, at 518.

172 Stuart Hall and D Morley, Stuart Hall: SELECTED WRITINGS: ESSENTIAL ESSAYS, VOLUME 2: IDENTITY AND DIASPORA 112- 113(2019).

173 ILO Report 2022, *supra* note 167, at 520.

“terrorist profiling practices based on a person’s ethnicity, national origin or religion in as much as they generate a climate of intolerance...is conducive to discrimination in employment and occupation and forced labour practices such as those alleged in the observations of the ITUC.”¹⁷⁴

The ILO Committee of Experts taking China to task on racial discrimination in labour and employment as imposed through its racialized security industrial complex recalls Adelle Blackett and Alice Duquesnoy’s observation that “transnational labor law is deeply historicized, rooted in the persisting presence of a racial capitalism that is too easily relegated to a distant past.”¹⁷⁵ It also demonstrated the potential for ILO jurisprudence to be a site in which the afterlives of slavery through racial capitalism and penal/carceral labour are taken seriously across global value and care chains.

Blackett and Duquesnoy’s critical work on the understudied dynamics of the ILO-US dialogue on racial disparities in forced penal labour centre around the US 1991 ratification of the ILO Abolition of Forced Labour Convention (No. 105). In this dialogue, the Committee of Experts turned its attention to racialization and mass incarceration through an analysis of Article 1(e) of Convention No. 105, which sets out that states parties undertake not to make use of any form of forced or compulsory labour “as a means of racial, social, national or religious discrimination”¹⁷⁷.

Despite the US attempting to advancing a textual argument that US prison labour was not necessarily the means of racial discrimination, the Committee’s 2007 General Survey of Convention No. 105 clarified that Article 1(e) required “the abolition of any discriminatory distinctions made on racial and other grounds “in exacting labour” for the purpose of production or service, and that situations in “which punishment involving compulsory labour” is meted out more severely to certain groups defined in racial and other terms, fall within the scope of the Convention.”¹⁷⁸ Notably, widespread international scrutiny and advocacy in regards to forced labour within the XUAR resulted in an April 2022 decision by the National People’s Congress to ratify two ILO conventions on forced labour – including the aforementioned Convention No. 105.¹⁷⁹ Thus, an important transnational legal mechanism has emerged for addressing racial capitalism in the XUAR through an evolving transnational labour jurisprudence on racialized carceral labour.

The ILO Committee of Experts’ approach in deliberately highlighting the racial power dynamics involved in China’s economic and counter-terrorism policies in the XUAR contrasts significantly with the US Uyghur Forced Labor Prevention Act¹⁸⁰,

174 *Ibid*, at 520.

175 Adelle Blackett and Alice Duquesnoy, *Slavery is not a Metaphor*, 67 UCLA L. Rev. 1504, 1507 (2021).

176 *Ibid*, at 1535.

177 *Ibid*, at 1523.

178 ILO, International Labour Conference: Eradication of Forced Labour, Report III (Part 1B), General Survey Concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), at 81.

179 *ILO welcomes China’s move towards the ratification of two forced labour Conventions*, ILO, (Apr. 20, 2022), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_842739/lang-en/index.htm.

180 Uyghur Forced Labor Prevention Act, Pub L No 117-78, 135 Stat 1525 (2021).

signed into law on December 23, 2021. The Act sets about identifying a list of entities in the XUAR (or in collaboration with the XUAR government) in using forced labour or extracting labour from “persecuted groups” through “the threat of penalty”.¹⁸¹ It also creates a rebuttable presumption that goods mined, produced, or manufactured in the XUAR be subject to important prohibitions due to forced labour concerns¹⁸² and imposes Magnitsky-type sanctions on individuals that the US government determines are responsible for human rights abuses related to forced labour in the XUAR¹⁸³.

Notably, the Act makes no reference to race or racial discrimination, Islamophobia or anti-Muslim animus, nor do they given any indication that the discriminatory imposition of coerced and penal labor was imposed by a set of counterterrorism and deradicalization policies. Rather, the Act uses the de-racialized language of “persecution” and states upfront that its goals are to allow the US to “lead the international community in ending forced labor practices wherever such practices occur”¹⁸⁴ while working to “prevent, publicly denounce, and end human trafficking...a modern form of slavery”¹⁸⁵.

These discursive choices are very deliberate and are used to create a rhetorical (and ultimately legal) differentiation between the practices of racial capitalism domestically and abroad so that it does not inadvertently condemn its own practices in the process of condemning those of the Chinese government. As detailed by Blackett and Duquesnoy, the US has, at least since 2001, attempted to use the discourse of trafficking to turn the focus of transnational labour law compliance away from racial discrimination.¹⁸⁶ In so doing, the US would attempt to position itself as “a moral leader in the eradication of a problem that it perceived mostly to be prevalent elsewhere but certainly also a role in which the state was less the problem than part of the solution.”¹⁸⁷ Blackett and Duquesnoy’s analysis of the US’ strategic use of “modern” forms of slavery also helps us see how the Act attempts to (1) disentangle forced labour from America’s own legacy of transatlantic slavery and relegate it safely to the past, (2) weaponize the rhetorical strength of “modern slavery” to be comparably reprehensible, and (3) assert the US’ claim to leadership of the free world in combatting slavery.¹⁸⁸ A racial capitalism analytic thus helps us not only surface patterns of discriminatory exploitation and accumulation in the XUAR, but also sheds light on the structuring of different policy responses toward the problem.

181 *Ibid.*, at § 2(d)(2)(a)

182 *Ibid.*, at § 3.

183 *Ibid.*, at § 5.

184 *Ibid.*, at § 1(2).

185 *Ibid.*, at § 1(4)

186 Blackett and Duquesnoy, *supra* note 175, at 1525-1533.

187 *Ibid.*, at 1526.

188 *Ibid.*, at 1519.

V. Conclusions

The contemporary human rights catastrophe that faces Uyghurs and other non-Han Indigenous peoples in the XUAR is made possible through a latticework of overlapping legal, political, and economic imperatives: settler colonial policies, global economic integration (including the BRI), insufficient international environment and labour protections, the global war on terror, and private-public carceral investments.

That these transformations began in earnest during the reform era of the 1990s, the Open Up the West campaign, and the perceived need for securitization which accelerated with the integration of the XUAR as a global hub of trade, manufacturing, and natural resource flows under the BRI should be cause for serious reflection among scholars of international economic law. Indeed, it is insufficient to treat political economy issues such as class, race, colonialism, and gender and other important vectors of power and privilege as incidental to law and economics or even worse, mere market ‘distortions’ or ‘externalities’.¹⁸⁹In other words, a racial capitalist analysis, with its focus on political economy, racialization, exploitation, capital accumulation, and (mal)distribution is part and parcel of rigorous international economic law scholarship.

Concerted efforts to exert international pressure on the Chinese government to address extrajudicial detention and enforced disappearances in the XUAR¹⁹⁰ have seen a certain degree of success. Starting in late 2018, the government began releasing select detainees from the re-education camps to house arrest.¹⁹¹In 2019, XUAR officials including Shohrat Zakir made statements indicating that the government’s counter-terrorism and deradicalization strategy had succeeded, most detainees had ‘graduated’ from the re-education camps, and thus the camps were being shut down.¹⁹²However, subsequent investigations have found that between 2019 and 2020, many detention facilities (whether officially earmarked as re-education centres, remand facilities, or prisons) were either newly built or significantly expanded¹⁹³.

While reports corroborate that some camp detainees had indeed finished their terms and had been released, others have been issued lengthy sentences and jailed in prisons, put in house arrest, or released to unfree labour placements managed by Xinjiang Aid¹⁹⁴. International pressure has been partially successful in winding down

189 Angela Harris, *Tracking Extraction*, LAW AND POLITICAL ECONOMY PROJECT, (Feb. 24, 2020), <https://lpeproject.org/blog/tracking-extraction/>.

190 Zachary Basu, *More countries join condemnation of China over Xinjiang abuses*, AXIOS, (Oct. 8, 2020), <https://www.axios.com/un-statement-china-uyghurs-xinjiang-6b29dbf5-b93c-4c70-bd4c-333e1c23471f.html>.

191 Gene A Bunin, *Detainees Are Trickling Out of Xinjiang’s Camps*, FOREIGN POLICY, (Jan. 18, 2019, 1:10 pm) <https://foreignpolicy.com/2019/01/18/detainees-are-trickling-out-of-xinjiangs-camps/>.

192 Mu Xuequan, *China Focus: Xinjiang determined in counter-terrorism, deradicalization, maintaining development*, XINHUA, (Dec. 9 2019, 9:12 am) https://web.archive.org/web/20210103082702/http://www.xinhuanet.com/english/2019-12/10/c_138618363.htm.

193 Nathan Ruser, *Documenting Xinjiang’s detention system*, AUSTRALIAN STRATEGIC POLICY INITIATIVE, (Sep. 2020), <https://cdn.xjdp.aspi.org.au/wp-content/uploads/2020/09/25125443/documenting-xinjiangs-detention-system.cleaned.pdf>.

194 Bunin, *supra* note 142.

extrajudicial camps, but this has in turn instigated conversion of camp infrastructure to a more formalized system of mass incarceration and prison-to-labour pipelines. This should serve to remind us that, while the specific forms may change, so long as the prevailing logics of racial capitalism are not directly challenged, the exploitation of data and labour, forced assimilation, and surveillance and control of racialized communities within the XUAR will continue, if under slightly different modes and processes.

Further, the modes in which international advocacy and pressure have been operating (that is, primarily through the foreign affairs branches of Western governments) has also had troubling effects in terms of campism¹⁹⁵ and opportunistic diplomatic co-optation by American politicians, inflaming a 'New Cold War' rhetoric through the escalating geopolitical rivalry between the US and China.¹⁹⁶ As surfaced by the earlier discussion of the discourse undergirding the Uyghur Forced Labour Prevention Act, the US government has made significant rhetorical efforts to downplay the connections between the racialized exploitation of labour through carceral approaches domestically and abroad. These fractures hint at the conceptual limits of liberal human rights discourse when discussing the current campaign of repression and exploitation in the XUAR.

Indeed, the entire scholarship of racial capitalism would suggest that US officials (and officials from many other Western countries) loudly condemning China on its policies of mass incarceration, racialized policing and surveillance, and settler capitalist exploitation would be a quintessential example of 'the pot calling the kettle black'. Yet given current distributions of geopolitical power, the perilous nature of domestic resistance during the Xi Jinping administration, and the ineffectiveness of the international community to push back against a member of the Permanent Five of the UN Security Council, there seems to be little alternative for relief.

These contradictions leave Uyghurs and other non-Han Indigenous populations in Xinjiang between a rock and a hard place. As Azeezah Kanji and David Palumbo-Liu note: '[t]rapped between China's abusive assimilationism, American political opportunism, and left-wing denialism, it is the Uighurs who are suffering. Abandoning them is not anti-imperialism, but the imperial politics of disposability by another name.'¹⁹⁷

Extending the analytic of racial capitalism and the generative scholarship that it has produced to China's Northwest Frontier helps us better understand how such logics operate and evolve within an interventionist state capitalist government outside

195 Catherine Putz, 2020 *Edition: Which Countries Are For or Against China's Xinjiang Policies?*, THE DIPLOMAT (Oct. 9, 2020), <https://thediplomat.com/2020/10/2020-edition-which-countries-are-for-or-against-chinas-xinjiang-policies/>.

196 Vijay Prashad and Jie Xiong, *Why Xinjiang is central to US cold war on China*, ASIA TIMES (Apr. 17, 2021), <https://asiatimes.com/2021/04/why-xinjiang-is-central-to-us-cold-war-on-china/>.

197 Azeezah Kanji and David Palumbo-Liu, *The faux anti-imperialism of denying anti-Uighur atrocities*, AL JAZEERA (May 14, 2021) <https://www.aljazeera.com/opinions/2021/5/14/the-faux-anti-imperialism-of-denying-anti-uighur>.

the direct ambit of white supremacy. It also helps us expose the racial, colonial, and economic underpinnings behind the global war on terror, particularly for marginalized and dehumanized Muslim populations from Palestine to Kashmir, from Myanmar to China. Indeed, it is the hope that the travel and cross-pollination of the racial capitalism analytic in an era of global capitalist hegemony will generate new insights not only for scholarship but also for new emancipatory possibilities and sites of solidarity.