

“All that Glitters is Not Gold”: Tibet as a Pseudo-State

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ALL THAT GLITTERS IS NOT GOLD: TIBET AS A PSEUDO-STATE

Abstract: “Old Tibet” is often envisioned as a territory always independent of China or at least enjoying “de facto independence” from 1913-1951 and thus with a “right to independence” today. Applying international law theories of statehood and examining relevant Tibet/China historical connections, it is argued that “old Tibet” was a pseudo-state comparable to several currently existing territories, such as Somaliland and the Turkish Republic of North Cyprus. It is demonstrated that whether the declaratory theory or constitutive theory of statehood is applied, Tibet was not a state during the Qing Dynasty (1644-1912) or subsequently, that no legal category of “de facto independence” exists, and that supposed indicators of Tibetan statehood have all been found at sub-state levels in China and elsewhere. The implications of the continuing claim of Tibetan statehood for relations between India and China and the United States and China are also examined.

Throughout history, Tibetans were not a unified people and the concept of a sovereign state in the modern sense never existed in the minds of Tibetans before the People’s Liberation Army invaded Tibet in the 1950s . . . The reason why most Tibetan civilians did not resist when the Chinese army entered Tibet in 1951 was because the concept that ‘our country is being invaded,’ did not exist for them.”

Dawa Tsering, chairman, Tibet Religious Foundation of the Dalai Lama (the Dalai Lama’s envoy in Taiwan), 2009¹

I. Introduction: The Continuing Claim of Tibetan Statehood

Leonardo DaVinci once remarked that “The greatest deception that men suffer is from their own opinions.”² Studies indicate that political self-deception is often based on the assumed virtue of a nation. The psychologist Harry Triandis relates how German intellectuals, including Nobel Prize winners, denied that Germany violated Belgium’s neutrality and committed war crimes there in 1914, despite clear evidence to the contrary.³ Triandis concludes “They just projected their hopes, desires and needs, the definition of self-deception.”⁴ Dismissal of those with contravening

¹ Loa Iok-sin, “Envoy Exposes Roots of Tibetan Anger, *Taipei Times* (TT), July 26, 2009. After his statement was criticized by other Tibetan exiles, Dawa Tsering issued a “clarification” stating that “while Tibet had experienced internal divisions in its history, it was an independent country and had never been occupied or ruled by a foreign country. The concept of a sovereign country in the Western sense was not understood by Tibetans, and they were not aware that it was their responsibility to defend their own country and sovereignty . . . Hence, when China invaded Tibet in 1950, Tibetans did not actively resist the invasion. Instead, they regarded the defense of their country as the responsibility of the Tibetan government.” Loa, “Clearing the Air,” TT, Aug. 2, 2009. He did not repudiate his view that Tibetans before 1951 were not unified and did not conceive that they lived in a sovereign state.

² Quoted in Al Gore, *The Assault on Reason* (New York: Penguin Press, 2007):112.

³ German troops executed six thousand Belgian civilian men, women and children in August-September 1914, after invading Belgium and Luxembourg, countries with which Germany had executed treaties promising to respect their neutrality. The German chancellor told the British ambassador in July, 1914 that these treaties were “scraps of paper.” Williamson Murray, “The Gathering Storm: from World War I to World War II,” *Footnotes* 14(19) (June, 2009).

⁴ Harry Triandis, *Fooling Ourselves: Self Deception in Politics, Religion, and Terrorism* (Westport: Praeger, 2009):xiii-xiv.

arguments as “propagandists” contributes to political self-deception. For example, on the eve of the invasion of Iraq, US conservative politicians and media figures described those opposed to going to war as “apologists and virtual propagandists for Saddam Hussein” and “unpaid but loyal propagandists for Saddam.”⁵

Tibetan exile leaders have self-deceptively reassured themselves that Tibet was a sovereign state before 1951 and has the right to be one again. The Tibet Government-in-Exile (TGIE) website carries the Dalai Lama’s “Vision for a Future Free Tibet,” issued in 1992, 13 years after he supposedly renounced independence⁶ and at a time when he was confident that China, like the ex-Soviet Union, would collapse.⁷ In it, he asserts Tibet is a “colony” under “occupation,” “Tibet and China are two completely separate entities” and “Tibetans have the right to independence.” Averring that “Tibet

⁵ Lee Anderson, “3 Congressional ‘Jane Fondas,’” *Chattanooga Times Free Press*, Oct. 2, 2002; Michael Medved, “Carving Up 10 Anti-War Arguments at Holiday Gatherings,” *WorldNewDaily.com*, Dec. 9, 2002, http://www.worldnetdaily.com/news/article.asp?ARTICLE_IS=29921. By 2008, the key conservative epithet was “socialist.” “Socialism vs. the Government Bailout of Capitalism,” Targeted News Service, Oct. 15, 2008; Mark Leibovich “Republicans’ go-to Slur: ‘Socialist!’” *International Herald Tribune* (IHT), Mar. 2, 2009. Ironically, a 2009 poll showed that 30% of Americans under age 30 (and 20% of Americans generally) favor socialism over capitalism, while 37% favor capitalism. “Just 53% of Americans Say Capitalism Better than Socialism,” *Rasmussen Reports*, Apr. 9, 2009, http://www.rasmussenreports.com/public_content/politics/general_politics/just_53_say_capitalism_better_than_socialism. With matters related to China, the charge of “propagandist,” “running dog” or “stooge” is often an argument of first resort even as to individuals who are in many respects clearly critical of the Chinese government. An American columnist for Hong Kong’s *South China Morning Post* (SCMP) has remarked that “All you have to do is see things China’s way occasionally and the stooge label will follow.” Michael Chugani, “Just a Stooge Act,” SCMP, Apr. 14, 2009.

⁶ See Dalai Lama Meets Overseas Chinese in Montreal,” Central News Agency (CNA)(Taiwan), June 23, 1993 (Dalai Lama says he has not called for Tibetan independence since 1979). The Dalai Lama did not however renounce independence in 1979. In an article late that year, he stated “To claim that Tibet is a part of the Chinese nation is both distorted and hypocritical,” and that Tibetans “remain under foreign military occupation.” “China and the Future of Tibet,” *Wall Street Journal*, Nov. 8, 1979. In 1979 or soon thereafter, “talks began on a Chinese proposal to grant Tibet more autonomy, and allow the Dalai Lama to return.” Kungo Juchen Thubten, who participated in talks with the Chinese government later commented that “We should have accepted it then.” Jeremy Page, “After 30 years of Frustration, Dalai Lama seeks Fresh Answers,” *The Times* (London), Nov. 15, 2008.

⁷ “China to ‘Go the Russian Way,’ Dalai Lama Says,” *Kyodo*, Aug. 1, 1992. See also “Tibetan Exiles Look Homeward as Dalai Lama Turns 60,” *Inter Press Service*, July 6, 1995, in which Samdhong Rinpoche, future exile prime minister, states “China too will soon fall apart. Just like the Soviet Union”. In 2009, he spoke of the “forthcoming fall” of the Chinese Communist Party. Claude Apri, “Interview with Prof. Samdhong Rinpoche, Prime Minister,” *Sify.com*, June 28, 2009, in *World Tibet Network News* (WTNN), June 28, 2009. In 2009 also, the Dalai Lama stated that “the whole communist political system is based on lies and hypocrisy.” Robert Marquand, “Impasse with China Erodes Dalai Lama’s Patience,” *Christian Science Monitor* (CSM), June 10, 2009. He also said that “the Communist Party has reigned long enough. Now it is time for their retirement.” Buchung Sonam, “Chinese Scholars Discuss Tibet with Dalai Lama,” *Phayul*, May 6, 2009.

belongs to Tibetans,”⁸ the Dalai Lama foresees a “joyful occasion” when “Chinese forces withdraw” and “the Chinese rulers find themselves compelled to leave Tibet.”⁹

Exile leaders’ 2008-2009 statements on Tibet’s status evidence a continued view of Tibet as a state as of right. The Dalai Lama’s London representative has said “Tibetans have a right to independence.”¹⁰ The leading exile journal has put it that “The Dalai Lama has never recognized Chinese sovereignty over Tibet. He has always maintained that Tibet has been a fully independent country.”¹¹ On the 50th anniversary of the 1959 Lhasa uprising, the Dalai Lama referred to China having occupied Tibet.¹²

Exile leaders insist “Tibet has always been independent”¹³ and is still a state,¹⁴ but occasionally they make anomalous affirmations. The Dalai Lama has said Tibet is “an autonomous region of the People’s Republic of China” (PRC), “Tibetan culture and Buddhism are part of Chinese culture,” and Tibet is part of China’s “5000-year history of tradition.”¹⁵ He has said he is “very much looking forward to becoming a citizen of the People’s Republic of China,” “would like to return to Tibet as a member

⁸ The slogan of “Tibet belongs to the Tibetans” can be interpreted in light of statements about the future status of non-Tibetans in the exile leaders’ ideal polity. Tibet Government-in-Exile (TGIE) head Samdhong Rinpoche has said there should be an “evacuation” of “Chinese” from Tibet. “Tibetans Reconciled to Chinese Sovereignty: Rinpoche,” *The Tribune* (Chandigarh), Sept. 10, 2005. He has also reportedly said that “Tibet’s long desired autonomy would ensure the withdrawal of the overwhelming Chinese population of Tibet” and that “This readjustment has to happen” “Anand Das, “China’s Attitude Toward Tibet Changing: PM-in-Exile,” *Chandigarh Newslines*, May 3, 2006. The power to determine who is allowed to live in a territory is typically asserted as an incident of statehood.

⁹ Dalai Lama, “Guideline for Future Tibet’s Polity and Basic Features of Its Constitution” (Feb. 26, 1992), <http://www.tibet.com/future.html>. From 1979 on, the Dalai Lama made statements indicating that he continued to seek Tibet’s independence or regarded Tibet as having a “right to independence.” See, e.g., “Marchers’ Private Audience with His Holiness the Dalai Lama,” WTNN, June 3, 1997, http://www.tibet.ca/en/newsroom/wtn/archive/old?y=1997&m=6&p=3-2_2 (“People must talk about independence. That is good. We have a right to ask for independence, but we need to think of our methods to struggle for independence”); “Dalai Lama Seeking ‘Union’ with Mainland China,” CNA, Feb. 8, 1994 (Tibet has the right to complete independence); “Tibetans ‘should Cry for Freedom,’” *Herald* (Scotland), Apr. 13, 1988 (Tibetan people have a right to claim independence); “Dalai Lama Warns China on Tibet Situation,” *Japan Economic Newswire*, Oct. 14, 1987 (“We have every right to demand independence”); “Representatives of Exiled Tibetan Leader Arrive” (Dalai Lama said “he would abandon his demand for Tibetan independence if he is convinced Tibetans are happy under Chinese rule”) Associated Press (AP), Oct. 22, 1984.

¹⁰ “Crunch Time for Tibetan Cause,” BBC News, Nov. 17, 2008, <http://news.bbc.co.uk/2/low/asia-pacific/7727791.stm>.

¹¹ “Chris Patten Wrong on Dalai Lama’s Position on Tibet’s Status,” *Tibetan Review* (Dec. 2008):20. The Dalai Lama stated in his “Five Point Peace Plan” (<http://www.dalailama.com/page.121.htm>), presented before US Congress members in 1987, that “under international law Tibet today is still an independent state under illegal occupation.” He has not expressly repudiated that position. The section of the TGIE website on the status of Tibet states “From a legal standpoint, Tibet has not lost its statehood. It is an independent start under illegal occupation.” TGIE, “The Status of Tibet,” <http://www.tibet.com/Status/statuslaw.html>.

¹² “March 10th Statement of H.H. the Dalai Lama,” www.dalailama.com/news.htm, March 10, 2009.

¹³ “Chinese Offer ‘Not Genuine,’” *Tribune News Service* (India), Feb. 4, 2002; TC Tethong, quoted in Nidhi Singh, “How the Bodhi Dharma Returned to India,” *India Currents* (June 2001), www.friends-of-tibet.org/nz/news/june2001update_9.html.

¹⁴ See, e.g., “Indiana U.-area Festival Celebrates Endangered Culture,” *University Wire*, July 10, 2006 (Thubten Norbu, Dalai Lama’s brother: “Tibet is still an independent country . . .”).

¹⁵ Lawrence Brahm, “Conciliatory Dalai Lama Expounds on Winds of Change,” *SCMP*, Mar. 14, 2005.

of China's Tibetan minority,"¹⁶ and "can accept the socialist system in Tibet under Communist Party rule."¹⁷ TGIE *Kalon Tripa* (prime minister) Samdhong Rinpoche has stated that from 1640-1951, Tibet had a local government in relation to China and that the TGIE does not represent the government of a nation separate from China.¹⁸

Because such seemingly contradictory statements skirt the central issue of whether Tibet is *legitimately* part of China, they are likely instrumental, rather than embedded positions of top exile leaders. For example, although the Dalai Lama stated in 2008 that he is willing to "accept the socialist system under Communist Party rule," he said in 2009 that "The Communist Party has reigned long enough. Now it is time for a retirement."¹⁹ As a 2008 *Times* (London) editorial put it, the Dalai Lama's position is "Tibet was independent and had been colonized."²⁰ On a 2006 visit to Dharamsala, India, where the Dalai Lama lives, a US journalist was told the TGIE views "current rule in Tibet as colonial and illegitimate."²¹ Samdhong Rinpoche stated in 2008 "[W]e will not say that [Tibet] was historically part of China. That is what China wants the Dalai Lama to say. We will not do it as it will legitimize their occupation of Tibet."²² He told an exile conference, "If the outcome of the present meeting is that we should switch over . . . to independence, we will gladly follow that."²³ The TGIE's Secretary for International Relations said in 2008 "No one can represent the Tibetans other than His Holiness."²⁴ Claims that exile leaders abjure independence -- that the Dalai Lama "den[ies] any political interest in Tibet [and] his only concern is to ensure the survival of Tibetan culture,"²⁵ that he has "give(n) up our right to nationhood,"²⁶ or that "He does not 'want to make this a sovereignty issue'"²⁷ -- are thus, as a popular Tibetan and Han Chinese idiom has it, "hanging up a sheep's head, but selling dog meat."²⁸

¹⁶ Alexander Norman, "I Can't Wait to Be a Chinese Citizen, says Dalai Lama," *Straits Times* (ST) (Singapore), May 18, 2008.

¹⁷ Nicholas Kristof, "An Olive Branch from the Dalai Lama," *New York Times* (NYT), Aug. 7, 2008.

¹⁸ Samdhong Rinpoche, testimony, Joint Meeting of the Standing Senate Committee on Foreign Affairs and Standing Committee of the House of Commons on Foreign Affairs and International Trade, Ottawa, Apr. 22, 2004, www.parl.gc.ca/committee/CommitteePublication.aspx?sourceID=8175x.

¹⁹ Bhuchung Sonam, "Chinese Scholars Discuss Tibet with the Dalai Lama," Phayul, May 6, 2009, in WTNN, May 7, 2009.

²⁰ "The Middle Way," *The Times* (London), Nov. 15, 2008. A prominent exile intellectual, Lobsang Sangay, asked whether he would choose an independent Tibet or an autonomous Tibet within China, responded "That's like asking whether I would prefer a Rolls-Royce or a Honda." "Resolution to Tibet Issue Unlikely, Panelists Say," *Harvard Crimson*, Nov. 24, 2003, in WTNN, Nov. 25, 2003.

²¹ Mridu Kullar, "A People in Exile," *East-West Magazine* (Oct. 2006), <http://www.eastwestmagazine.com/content/view/84/40/>.

²² "Interview: Very Few Chances of Agreeing with China: Tibetan Leader," Indo-Asian News Service (IANS), June 8, 2008

²³ "Tibetan Exiles Debate Pushing for Independence," AP, Nov. 19, 2008. Samdhong Rinpoche, asked in 2001 about the demands of exiles for independence, responded, "We are not opposing their stand." "Tibet: the Second Generation of the Freedom Struggle," Press Trust of India (PTI), Oct. 21, 2001. [asp?id=22966&article=Former+Indian+Deputy+PM+Launches+Book+on+Tibet&t=1&c=1](http://www.pti.com/asp?id=22966&article=Former+Indian+Deputy+PM+Launches+Book+on+Tibet&t=1&c=1).

²⁴ "China Targets Dalai Lama with Slavery Charges," IANS, Jan. 30, 2009.

²⁵ "Tibet Games," *Indian Express* (IE), Aug. 27, 2008.

²⁶ International Campaign for Tibet (ICT), "Dalai Lama's Special Envoy Lodi Gyaltzen Gyari," in WTN, Nov. 6, 2006.

²⁷ Daniel Allen, "Lost Horizon," Accuracy in Media, Apr. 1, 2009, <http://www.aim.org/briefing/print/lost-horizon/>.

²⁸ In Chinese, *gua yang tou, mai gou rou* (挂羊头卖狗肉). For Tibetan versions see Acharya Sagnye Naga and Tsepak Rigzin, *Tibetan Quadrisyllabics, Phrases and Idioms* (Dharamsala: Library of Tibetan Works and Archives 1994):228. A similar English idiom is "Cry wine and sell vinegar."

Those who contend that Tibet's attachment to China is illegitimate because the region was invaded, occupied and colonized, and who affirm a continuing right to independence, may reasonably be suspected of seeking to realize that right. Almost up to the day the US Civil War began, Jefferson Davis, as a US Senator from Mississippi, assured Northern audiences that he opposed secession, but he also affirmed that the South had a right to independence. When Mississippi seceded, Davis stood by it and soon became president of the Confederate States of America (CSA).²⁹ After CSA leaders' attempt at secession failed, they still "defended the legal right of secession."³⁰

Exile leaders argue that Tibet's statehood is based on a lack of Chinese central government influence in Tibet from 1913 (when the Lhasa government "declared independence") to 1951, as well as on superficial indicators of a state, such as flags, passports, stamps and currency.³¹ Most people do not know that such supposed indicia of sovereignty are also found among non-state territories or that legal standards for statehood exist or that hiatuses in national government control over a territory do not automatically convert the territory into a state. They are often unaware that parts of countries have no "right to independence." For example, after its governor hinted in 2009 that Texas might secede from the US if Texans found the federal government's policies not to their liking, 31% of polled Texans believed Texas has a right to secede³² -- and that despite a post-Civil War US Supreme Court ruling that held that neither Texas nor any other part of the US has that right.³³ Under such circumstances, it is not hard to convince people that Tibet was and should be independent.³⁴

Taking "Independent Tibet – Some Facts," a 2009 pamphlet by Tibetan émigré polemicist Jamyang Norbu,³⁵ as an example of exile leaders' efforts to reassure themselves on the independence of Tibet, we will first examine putative indicators of its statehood in the first half of the 20th Century. Using international law theories, we then gauge the degree to which Tibet's erstwhile "de facto statehood"³⁶ fit the criteria of a modern state. Next, we look at historical connections between China's emperors and Tibet. Finally, we discuss the impact of the idea of Tibet as a state on China's relations with the Tibetan exiles' two main patrons, India and the US. It will be argued that China's emperors had ample connections with Tibet, especially during the

²⁹ For his own account, see Jefferson Davis, *The Rise and Fall of the Confederate Government*, 2 v. (New York: D. Appleton, 1881). Future Confederate Vice-President Alexander Stephens also spoke against secession, but averred that the South had a right to it if the North took action contravening Southern interests. See James Abrahamson, *Men of Secession and Civil War, 1859-1861* (New York: Rowman & Littlefield, 2000):Ch. 6

³⁰ H.R. Joint Committee on Reconstruction, 39th Cong., Report of the Joint Committee on Reconstruction xii (1st Sess. 1866):xvii.

³¹ The ICT, for example, in arguing that Tibet is under "Chinese occupiers," states that Tibet had its own flag and currency. "All About Tibet," <http://www.savetibet.org/resource-center/all-about-tibet>.

³² Roy Bragg, "Perry's Hint of Secession May be Aimed at Primary," *San Antonio Express-News* (US), Apr. 19, 2009.

³³ *Texas v. White*, 74 U.S. 700 (1869).

³⁴ Most Westerners and Japanese polled during the demonstrations in Tibet in 2008 said that Tibet should not be part of China. "Should World Leaders Skip the Olympics," Harris Poll #55, May 21, 2008, www.harrisinteractive.com/harris_poll/index.asp?PID=909.

³⁵ Reproduced in Jamyang Norbu, "A Losar Gift for Rangzen Activists," WTN, Feb. 26, 2009.

³⁶ "De facto states," "pseudo-states" "unrecognized states," quasi-states," and "para-states" are used interchangeably in the scholarly literature. Pal Kolsto and Helge Blakkisrud, "Living with Non-Recognition: State- and Nation-building in South Caucasian Quasi-States," *Europe-Asia Studies* 60:3 (2008):483-509. Pseudo-states is used here to emphasize that such territories are legally not states.

last dynasty (Qing 1644-1911) and neither the temporary absence of central government authority in Tibet from 1913-1951, nor the superficial indicators said to prove Tibetan statehood, demonstrate Tibet was a state. No matter which international law theory of the recognition of states is used moreover, Tibet failed to meet the test of a state. It did not fulfill the accepted criteria for recognizing a state and was not regarded as a state by the world's recognized states and international organizations.

Tibet, it will be shown, was a pseudo-state³⁷ -- a territory that slipped from control of a state splintered by invasion or civil war, but has gone unrecognized as a state.³⁸ Present-day pseudo-states and the states from which they have attempted secession include South Ossetia and Abkhazia (Georgia), Transnistria (Moldova), Nagorno-Karabakh (Armenia),³⁹ the Turkish Republic of Northern Cyprus (TRNC) (Cyprus), Tamil Eelam (Sri Lanka) and Somaliland (Somalia).⁴⁰ Recognized by 23 small and poor states, Taiwan (China),⁴¹ is arguably also a pseudo-state.⁴² Kosovo (Serbia) is an ambiguous example. While by 2009, 56 of the world's 192 states, including the US and most European states,⁴³ had recognized it, many key states (China, Russia, India, etc.) had not. Kosovo is highly dependent on the US and EU and, like most pseudo-states, is far from successful,⁴⁴ except in the sense that its secession has served to justify the avowed independence of other pseudo-states, South Ossetia and Abkhazia.⁴⁵

Tibet was a typical pseudo-state, experiencing scant development and unsuccessful in terms of recognition by states and international organizations, only in part because

³⁷ Vladamir Kolossov and John O'Loughlin, "Pseudo-states as Harbingers of a Post-Modern Geopolitics: the Example of the Trans-Dniester Moldovan Republic (TMR)," *Geopolitics* 3:1 (1999):151-176; Adrian Florea, "Pseudo-States in International Politics: Emergence and Durability," paper presented at the Midwest Political Science Association, Chicago, Feb. 13, 2009.

³⁸ Christopher Waters, "Law in Places that Don't Exist," *Denver Journal of International Law* 34 (2006):401-423 (401-402), reckons that there are presently "a dozen or so" such unrecognized secessionist states" and that several "have remained unrecognized over long periods."

³⁹ See, e.g., Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (Washington: US Institute of Peace, 2004); Michael Rywkin, "The Phenomenon of Quasi-States," *Diogenes* 53:2 (2006):23-28. Lynch's later work acknowledges the non-statehood of such territories by terming them "de facto 'states.'" D. Lynch, "De Facto 'States' Around the Black Sea: The Importance of Fear," *Southeast European and Black Sea Studies* 7:3 (2007):483-496.

⁴⁰ Kolsto, *The Sustainability*:726.

⁴¹ "Taiwan President Vows Resumption of Diplomatic War if China Rejects Truce," CNA, Aug. 27, 2008. To accommodate Taiwan's government, the mainland has called a "diplomatic truce" in which it will not seek to encourage countries that want to switch sides (e.g. Paraguay, El Salvador) to actually de-recognize Taiwan. "MOFA to Follow 'Paraguay' Model to Keep El Salvador Ties," *China Post* (Taiwan) "China Not Involved in Foreign Affairs Matter: Presidential Office," CNA, Mar. 21, 2009.

⁴² Leon Hadar, "When Seceding Gets Ugly, Half Pregnancy may be Best," *Business Times* (Singapore), Aug. 19, 2008 (Taiwan as pseudo-state).

⁴³ For a running tally, see "Who Recognized Kosova as an Independent State," www.kosovothanksyou.com/. On Kosovo as a Western project, see Robert Delahunty and Antonio Perez, "The Kosovo Crisis: A Dostoevskian Dialogue on International Law, Statecraft, and Soulcraft," *Vanderbilt Journal of Transnational Law* 42 (2009):15-142. US "nation building" in Kosovo includes encouraging other states to recognize it. See, e.g., "US Thanks Maldives for Decision to Recognize Kosovo," *Miadhu News* (Maldives), Mar. 11, 2009, in BBCWM, Mar. 11, 2009.

⁴⁴ While garnering recognitions, Kosovo has a failed economy, imbrication of politics and gangsterism, and EU/US tutelage. See Shqiptar Oseu, "The Perfect Debate," Self-Determination Movement (Kosovo), Jan. 5, 2009, in BBCWM, Jan. 9, 2009; George Szamuely, "The Absurdity of 'Independent' Kosovo," *Counterpunch*, Feb. 15, 2008, <http://www.counterpunch.org/szamuely02152008.html>

⁴⁵ See Ted Galen Carpenter, "Staying Alive," *The National Interest* (Mar.-Ap. 2008); Gregory Dubinsky, "The Exceptions that Disprove the Rule? The Impact of Abkhazia and South Ossetia on Exceptions to the Sovereignty Principle," *Yale Journal of International Law* 34 (2009):241-246.

it scarcely tried to obtain recognition. Most pseudo-states also put disproportionate resources into military defense, enjoy support of a strong patron, and have seceded from a weak state.⁴⁶ Such conditions applied to “old Tibet.” It had an army of one percent of its people, a higher ratio than the US, with its 761 bases abroad.⁴⁷ It seceded when China was so weak that Sun Yat-sen, father of the Republic of China (ROC), said it was “not just the colony of one country, [but] the colony of many countries.”⁴⁸ Tibet enjoyed British patronage during much of the first half of the 20th Century.⁴⁹

Because the US and India are the Tibetan émigrés’ chief patrons, the idea of Tibet as a state is a longstanding irritant in their relations with China and could become a factor in future US/China or India/China confrontations. In any event, acceptance of the idea that Tibet is entitled to independence because it was once a state makes settlement of the Tibet Question more difficult. The Chinese government insists that negotiations between it and the Dalai Lama cannot take place without the latter’s public agreement that Tibet is an inalienable part of China.⁵⁰ That would imply his acceptance that Tibet is legitimately part of China and that China has been and will continue to be entitled to exercise sovereignty in Tibet. It is a position already implied in the non-recognition by states and international organizations of both “old Tibet” and the TGIE. The Dalai Lama is not however likely to meet this pre-condition unless the self-deceptive notion that Tibet was and is a state is first dispelled.

II. Is International Law Relevant to the Question of Tibetan Statehood?

States and political movements invoke international law when it suits their interests. To gain support for altering Tibet’s political status, exile leaders and supporters often cast the Tibet Question as not about gaining independence, directly or indirectly, but instead about preserving Tibetan culture⁵¹ or advancing Tibetans’ human rights.⁵² The movement can thus present itself as not centered on advancing the political program

⁴⁶ Pal Kolsto, “The Sustainability and Future of Unrecognized Quasi-States,” *Journal of Peace Research* 43:6 (2006):723-740. Kolsto uses quasi-state interchangeably with pseudo-state. Id. at 723.

⁴⁷ Robert Ford, “Robert Ford’s Report,” (Dharamsala: TGIE, 1994), www.tibet.com/status/ford.html; Chalmers Johnson, *Sorrows of Empire* (New York: Metropolitan Books, 2004).

⁴⁸ Sun Yat-sen, “The Three People’s Principles,” in Wm. Theodore de Bary & Richard Lufrano (eds), *Two Sources of Chinese Tradition*, 2d ed. (2000):320-321.

⁴⁹ McKay, Tibet and:49-50, 201-202 (13th Dalai Lama, offered the British suzerainty over Tibet and by following British advice received British support for his regime). The 13th Dalai Lama is also said to have offered the British a protectorate over Tibet, in a meeting with the British Viceroy of India, Minto, in April, 1910. See Wendy Palace, *The British Empire and Tibet, 1900-1922* (London: Routledge 2005):65-66, 69. McKay emphasizes that British officials created “a ‘core’ image, one of Tibet about to become a modern nation-state, united under a single government, sovereign within its borders . . .” and “did not . . . articulate the interest of the eastern Tibetan principalities which aspired to autonomy, or even to closer ties with China.” Id.:209.

⁵⁰ “Dalai’s Envoys, China to Resume Crucial Talks on Tibet Issue,” PTI, Oct. 30, 2008.

⁵¹ “Dalai Lama to Appeal to China in Speech,” Associated Press (AP), Oct. 12, 2007 (Dalai Lama’s envoy states “We are not talking about independence. We are talking about Tibetans having complete freedom when it comes to matters of religion and culture”).

⁵² On efforts to gain political advantage by melding questions of human rights and sovereignty in Tibet, see Allen Carlson, *Beijing’s Tibet Policy: Securing Sovereignty and Legitimacy* (Washington: East-West Center, 2004):31-32. Some pro-independence Tibetan exile writers recognize that while a human rights-centered discourse of Tibet has been foregrounded, the goal of independence remains central. See, e.g., Yodon Thonden, “The Indigenous Route to Independence,” *Tibetan Review* 25(4) (1995):15.

of the scions of old Tibet's aristocratic/theocratic elites, who disproportionately lead the exiles and their supporters,⁵³ but instead on protecting average Tibetans.

Those who invoke international law when it suits their interests often scorn it when it contravenes them.⁵⁴ US conservatives are often hostile to international law as averse to the Constitution⁵⁵ because it may limit projection of US armed force. Others argue that international law can be disregarded because it only reflects the interests of state rulers and not popular aspirations, or because it is rule-based and thus "positivistic," or because it does not advance rights that fit their political goals, such as a "right to independence" that would vitiate state territorial integrity now protected in domestic and international law.⁵⁶ Some also scorn international law as technicalities beyond their interest and knowledge.⁵⁷ Their view is akin to that of Algerian elites who argued that the country's constitution is a "mere piece of paper" that should not keep Pres. Bouteflika from being re-elected for life.⁵⁸ Yet, no matter how technical it may be, international law at least provides theories, with well-established criteria, for judging whether a territory is a state. To quote DaVinci again, "He who loves practice without theory is like the sailor who boards a ship without a rudder and compass."⁵⁹

Ethnic separatists who scorn international law principles designed to prevent inter-state and civil wars over territory often claim, without supporting evidence, that almost their entire ethnic group wants separation and thus has a right to it. The Dalai Lama has said 90 percent of Tibetans "feel resentment due to pain and suffering,"⁶⁰

⁵³ Three sons of the Lhasa aristocratic Tethong family have served as TGIE ministers. One now heads the Dalai Lama Foundation and Committee of 100 for Tibet; his daughter is head of Students for a Free Tibet. Another Tethong was recently head of the International Tibet Support Network and Tibet National Olympic Committee. The Voice of America's Tibet service is headed by a descendant of Lukhang, the aristocratic 1950s premier; Radio Free Asia's Tibet service is headed by a Ngapo, another aristocratic family. Robert Barnett, *Lhasa: Streets with Memories* (New York: Columbia University Press, 2006):19; Drokpakunle, "Time for a Change," Phayul, Dec. 6, 2007, www.phayul.com/news/discuss/view.aspx?id=18726. The Dalai Lama's family was enobled when he was a child and in every TGIE cabinet from 1991 to 2001 there was at least one minister from the Dalai Lama's family. Lobsang Sangay, "Tibet: Exiles' Journey," *Journal of Democracy* 14:3:119-130.

⁵⁴ Ironically, the Chinese government, for all its human rights violations, has in the present decade defended basing international relations on international law, while the US has been the chief antagonist of that approach. See Ann Kent, "China's Changing Attitude to the Norms of International Law and Its Global Impact," in Pauline Kerr, et al. (eds.), *China's 'New' Diplomacy: Tactical or Fundamental Change?* (New York: Palgrave Macmillan, 2009):55-76.

⁵⁵ David Weigel, "Conservative Coalition Takes Aim at Obama Legal Nominee," *Washington Independent*, Apr. 9, 2009.

⁵⁶ Declaration on Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15th Sess., Suppl. No. 16, U.N. Doc. A/4884 (1960):66 ("Any attempt at partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations"); *Texas v. White*:724-725("The Constitution in all its provisions looks to an indestructible union . . .").

⁵⁷ These arguments have each been made to the author at paper presentations on the relationship of international law and separatism in China. The principle of respect for the territorial integrity of states (*uti possidetis*) is a cornerstone of international law that has been adopted to diminish the potential for "border wars" and wars to suppress attempts to secede. See Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed. (London: Routledge, 1997):162-163.

⁵⁸ Ahmed Aghrout and Yahia Zoubir, "Introducing Algeria's President-for-Life," Middle East Report Online, Apr. 1, 2009, www.merip.org/mero/mero040109.html.

⁵⁹ http://thinkexist.com/quotation/he_who_loves_practice_without_theory_is_like_the/214658.html.

⁶⁰ "Suppression would be Counterproductive Warns Dalai Lama," United News of India, Jan. 21, 2009.

“95 percent of Tibetan population [are] against the Chinese rule,”⁶¹ and that over 99 percent of Tibetans support him.⁶² “Tibet supporters” speculate that “Tibetans overwhelmingly . . . wish to see an independent Tibet.”⁶³ Such claims are based not on evidence, but on the idea that ethnic differences create a “natural law” that ethnic groups are entitled to their own states.

International law however rejects the idea that ethnic groups have a “right to independence;”⁶⁴ unsurprisingly, as many of the world’s 5,000 ethnic groups would only realize that “right” through civil war with an unwilling central government or end up battling neighboring states over contested territories if they did achieve independence.⁶⁵ Even though there is now no international recognition of a right to independence, “there are approximately 80 ethnically-oriented protracted conflicts around the world, and at least 48 existing or potentially violent ethnic conflicts are in progress,”⁶⁶ a number that would likely increase sharply were there a recognized right to independence. A UN commission on the former Yugoslavia concluded that Serbs seeking independence from Bosnia are limited to attaining international standards of minority and human rights protection, i.e. a form of autonomy (internal self-determination), not independence (external self-determination).⁶⁷ Canada’s Supreme Court has observed that “[a] right to external self-determination . . . arises only in the most extreme of cases and, even then, under carefully defined circumstances.”⁶⁸

When international law is not explicitly scorned, attempts are nevertheless made to avoid it by misrepresenting the conclusions that can be drawn from its principles. It has been claimed, for example, that “without exception, every independent scholar who has examined this question concluded that Tibet qualified under international law as a sovereign state in 1950.” The “Tibet movement”-affiliated US lawyer who wrote

⁶¹ “For his own Good,” Primetime Live, ABC News, July 11, 1991.

⁶² “Dalai Lama says Talks Meaningless if China Refuses to Admit Problem,” PTI, Mar. 31, 2009.

⁶³ “Special Tibet Hearing in UK Parliament,” WTNN, Dec. 10, 1993. Note that the team that put forward this statement to the UK parliament, demanding that the British government recognize the “Tibetan Desire for an Independent Tibet,” included a TGIE minister and the Dalai Lama’s representative in London, while the Dalai Lama’s ostensible position was that he favors “genuine autonomy,” rather than independence.

⁶⁴ See Fred Betram, “The Particular Problems of (the) Roma,” *U.C. Davis Journal of International Law & Policy* 3 (1997):1-33 (“International law does not ascribe the ethnic groups within states the right to independence”). Most leading Tibetan exiles who know that international law strongly disfavors self-determination for ethnic groups thus argue Tibet was an independent state that was illegally invaded. Others have tried different tacks. For example, a prominent Tibetan exile scholar argued that Tibetans are not simply an ethnic group, but a civilization. Dawa Norbu, *China’s Tibet Policy* (Surrey: Curzon Press, 2001):341-342. “Civilizations” however are not entitled to self-determination and have no legal personality under international law, which last used “civilization” as an analytical category when the League of Nations gave Europeans temporary colonies (mandates) where they were to monitor native peoples’ progress toward “civilization.” See John Strawson, “Mandate Ways: Self-Determination in Palestine and the “Existing Non-Jewish Communities,” in Sanford Silverberg (ed.), *Palestine and International Law: Essays on Politics and Economics* (London: McFarland, 2002):251-270 (255).

⁶⁵ Lee Buchheit, *Secession: The Legitimacy of Self-Determination* (1978):23 (if a right to independence for ethnic groups existed, the world would become much more fragmented, unstable, and incapable of solving world problems or even providing the necessities of life).

⁶⁶ Zhu Yuchao and Dongyan Blachford, “Ethnic Disputes in International Politics: Manifestations and Conceptualizations,” *Nationalism and Ethnic Politics* 12 (2006):25-61 (25).

⁶⁷ Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia [Badinter Commission], Opinion No. 2, Jan. 11, 1992, 31 I.L.M. 1497, 1498 (1992).

⁶⁸ *Reference Re Secession of Quebec*, 2 S.C.R. 217, 282 (1998).

those words went on to cite the Dalai Lama's lawyer as one of those "independent scholars." No other scholar he cited had a background in law. They included a professional propagandist for the US government's Radio Free Asia Tibetan-exile run service, a former editor of the exile pro-independence organ *Tibetan Review*, and a US scholar who is an outstanding anthropologist and historian of Tibet, but who has not considered international law in relation to Tibet's putative statehood.⁶⁹

Such misrepresentations reflect tendentious efforts of "Tibet supporters" to bend their analysis to the goal of independence, without regard to firm tenets of international law. For example, following the Dalai Lama's statement that "lawyers must 'ensure Tibet's just cause is served,'" the head of the International Committee of Lawyers for Tibet in Los Angeles has said that "the biggest contribution lawyers could make was to continue providing legal briefs, research/studies into the status of Tibet, and the legal standpoint necessary to combat China's arguments over Tibet's right to independence."⁷⁰ Yet, even independence supporters who do not wholly ignore relevant law note that the international community's recognition of China's *de jure* sovereignty over Tibet has weakened the case for Tibet independence.⁷¹

III. "Old Tibet" as Fit to be Independent

"Independent Tibet: Some Facts" is typical of works that affirm Tibet's statehood in praising the pre-1951 state of affairs in Tibet.⁷² Old Tibet is often portrayed as Shangri-la in order to create a general "pro-Tibet" sentiment, a depiction that has been critically deconstructed by scholars.⁷³ Jamyang Norbu's approach is more specific. Arguing that it fed the population, had no external debt, kept basic law and order, and did not persecute its tiny Muslim minority, he depicts the old Lhasa regime as not oppressive in order to show that it was fit to rule an independent state. The historian of Tibet Alex McKay has shown how British colonial officers, in order to promote Tibet independence, did the same: they portrayed old Tibet in a positive light in order to "create an impression of the Tibetans as worthy allies of the British."⁷⁴

From Norbu's description, one would never know that, despite significant achievements in philosophy, medicine, and the arts, Tibet was "abysmally feudal" and that "the Tibetan socio-economic and political system resembled that of the Middle

⁶⁹ See Robert Sloane, "The Changing Face of Recognition in International Law: a Case Study of Tibet," *Emory International Law Review* 16 (2002):107-186. The "independent scholars are Michael van Walt van Praag, the Dalai Lama's lawyer; Warren Smith, the RFA propagandist; and Dawa Norbu, former editor of *Tibetan Review*. Melvyn Goldstein is the anthropologist and historian of Tibet.

⁷⁰ Kim Nguyen, "Dalai Lama, Second Nobel Laureate Say Lawyers Can Make Difference," *Metropolitan News Enterprise* (Los Angeles), June 29, 2000.

⁷¹ "Conference for an Independent Tibet," www.friendsoftibet.org/sofar/delhi/tsg_meet_june_2007.

⁷² To show that Tibetans unrelentingly defended a "fully functioning and independent state," Norbu also makes such unsustainable claims as that the Tibetan army retreated "in good order" from the advancing Chinese People's Liberation Army (PLA) in 1950 and "No unit fled or surrendered." Tsering Shakya, however, specifically describes surrender and desertion by Tibetan forces, as well as panic, looting and the break down of social order in areas they abandoned. Shakya, *Dragon in the Land of Snows: a History of Modern Tibet Since 1947* (London: Pimlico, 1999):9.

⁷³ Donald Lopez, *Prisoners of Shangri-la: Tibetan Buddhism and the World* (Chicago: University of Chicago Press, 1998); Peter Bishop, *The Myth of Shangri-la: Tibet, Travel Writing, and the Western Creation of Sacred Landscape* (Berkeley: University of California Press, 1989); Dibyesh Anand, *Geopolitical Exotica: Tibet in Western Imagination* (Minneapolis: University of Minnesota, 2007).

⁷⁴ Alex McKay, *Tibet and the British Raj: the Frontier Cadre, 1904-1947* (London: Curzon, 1997):210.

Ages in Europe,” in the words of Tsering Shakya, a leading exile historian of modern Tibet.⁷⁵ The Lhasa administration’s ability to give food relief to impoverished parts of the population or to avoid indebting itself when buying arms abroad, was due to forced labor, taxes, fees and obligations not markedly different from those in other feudal societies.⁷⁶ Moreover, *local* governments the world over provide for welfare, avoid foreign debt, and eschew persecution of minorities: Hong Kong, a local government in China, has no foreign debt and an elaborate, if inadequate, welfare system. Its minorities face social discrimination, but not government persecution.⁷⁷

Neither would one know from Norbu’s assertions that the Lhasa administration, in the teens, 20s and 30s of the last century, was engaged in almost continuous warfare against Tibetan and Muslim Chinese forces on the eastern Tibet Plateau, outside the jurisdiction of the theocratic “Great 13th,” the present 14th Dalai Lama’s immediate predecessor.⁷⁸ There were also insurgencies and mini-civil wars on Lhasa government territory, including battles among factions of monks that left hundreds dead in 1947.⁷⁹ There were, moreover, expulsions of Han Chinese in 1912 and 1949, the latter, it appears, at the instigation of Hugh Richardson, the British representative in Lhasa.⁸⁰

IV. Pseudo-Indicators of Independence

Norbu’s “Independent Tibet . . .” mainly focuses on supposed indicators that a sovereign Tibetan state existed in the first half of the 20th Century. He discusses the

⁷⁵ A. Simpson, “Where the Soul Calls Home,” *Herald* (Scotland), Aug. 2, 1999; Shakya, *Dragon*:11. Lobsang Sangay has observed that “Before 1959, Tibet was ruled under a two-tiered feudal system [with] *Tsidrung* (monk-officials) and hereditary *Kudrak* (aristocrats) controlling the government” Sangay, *Tibet*.

⁷⁶ Melvyn Goldstein, *A History of Modern Tibet: the Demise of the Lamaist State* (Berkeley: University of California, 1989):613-614.

⁷⁷ Kelvin Chan, “Renminbi Peg for Hong Kong Dollar ‘is Worth Considering,” SCMP, Aug. 28, 2003; Yau Chui-yan and Daniel Sin, “Social Welfare’s 50-year Passage from Giving Away Cattle to Political Sacred Cow,” SCMP, Jan. 4, 2009; Fanny Fung, “Hong Kong Faces,” SCMP, Feb. 19, 2009; Frank Ching, “EOC has Dropped the Baton on Race Issues,” SCMP, Mar. 17, 2009.

⁷⁸ Stephanie Roemer, *The Tibetan Government-in-Exile: Politics at Large* (London: Routledge 2008):27.

⁷⁹ Charles Bell, *Tibet: Past and Present* (Oxford: Oxford University Press, 1927):191-193; Zahiruddin Ahmad, *Sino-Tibetan Relations in the Seventeenth Century* (Rome: Istituto Italiano per il Medio ed Estremo Oriente, 1970):101; Goldstein, *A History*:513; Roemer, *The Tibetan*:12; Thomas Laird, *The Story of Tibet: Conversations with the Dalai Lama* (Berkeley: Grove Press, 2007):286; Robbie Barnett, “Essay,” in Steve Lehman, *Tibetans: a Struggle to Survive* (Santa Fe: Umbrage, 1998):192.

⁸⁰ The first expulsion apparently involved all Han, with the last Han leaving Tibet in January, 1913. “Major Events in Tibet’s History,” <http://www.friendsoftibet.org/main/events.html>. The British Indian government was to dispatch Darjeeling’s Superintendent of Police, who was attached to the Dalai Lama during his stay in India in 1910-1912, to Lhasa to “persuade the Chinese to surrender and ensure that their repatriation was smooth.” The order was countermanded by London, but the British did see to the evacuation of Chinese from Tibet via India. Parshotam Mehra, “The Mongol-Tibetan Treaty of January 11, 1913,” *Journal of Asian History* 3:1 (1969):1-22 (fn. 9). In 1949, 300-400 Han officials and “spies” were expelled. Goldstein, *A History*:613-614. Richardson however states there were very few other Han in Lhasa in 1949, merely a handful of traders, as well as a few Muslim Chinese butchers. H. Richardson, “My Direct Experience of Independent Tibet 1936 - 1949,” in All Party Parliamentary Group on Tibet, *Tibet - The Truth about Independence* (London:, APPGT, 1991). Before the Lhasa uprising of 1959, the “Enlarged Congress of an Independent Tibet” also demanded the expulsion of Han people. Chu Hong-yuan, “Tibetan Independence Movement,” in Wang Ke-wen (ed.), *Modern China: an Encyclopedia of History, Culture and Nationalism* (New York: Garland, 200):360-361.

creation by the Lhasa government of a flag, anthem, currency, passport, and postal service, as well as maps and treaties that he asserts are evidence that Tibet was a state.

The provinces of many federated countries (the US, Canada, Australia, etc.) have their own flags, songs and even provincial birds, trees and flowers.⁸¹ Currencies, passports, postage stamps etc., are also insufficient to make a territory an independent state. During the same era in which the Lhasa government issued currency, so too did the governments of most provinces -- and even some counties -- of China.⁸² Most Chinese provinces had declared independence, either during the dictatorship of Yuan Shikai (1912-1916) or the warlord period (1916-1927)⁸³ and many were not to again be under central government control until 1949, about the same time as Tibet.

Currencies are sometimes issued by territories whose leaders want them to be recognized as a state and believe that foreign governments will be impressed with such pseudo-indicators of independence -- although they seldom are. For example, around 2004, the pseudo-state of Nagorno-Karabakh had a currency issued, but no state has recognized its validity.⁸⁴ By the same token, a state can forgo having its own currency. Ecuador, El Salvador and Zimbabwe use the US dollar as their national currency, but no one disputes that they are full-fledged states.⁸⁵

From 1916 to 1949, most areas of China were controlled by warlords, Japanese occupiers, or the Communist Party, rather than the Guomindang (KMT or Nationalist Party) central government. Thus, in 1936, when China had 30 provinces,⁸⁶ the KMT only solidly ruled two provinces and had some control in eight other provinces.⁸⁷ These areas each issued their own postage stamps.⁸⁸ Many colonial territories, e.g. French West Africa and present-day British or Australian island dependent territories (Falklands, Cocos, etc.) have done likewise. In fact, the British Pacific and Atlantic dependencies of Pitcairn and Tristan da Cunha, respectively have postage stamps as their first and second largest sources of revenue.⁸⁹ Several autonomous areas of states, such as Denmark's Faroe Islands and Greenland, have their own banknotes and

⁸¹ See, e.g., Canada's Flags and Symbols," <http://www.enchantedlearning.com/school/Canada/Canadaflag.shtml>; "50 State Songs," <http://www.50states.com/songs/>.

⁸² Ch'i Hsi-sheng, *Warlord Politics in China, 1916-1928* (Stanford: Stanford University Press, 1976):161; Yasutomi Ayumu, "County Currencies and the Manchurian Incidents," *Chinese Business History* 12:2 (2002): 1-2, 10.

⁸³ See, "Six Chinese Provinces Declare Independence," NYT, June 3, 1917.

⁸⁴ Elizabeth Owen, "Tempers Flare over the Issue of Nagorno-Karabakh 'Souvenir' Currency," Eurasianet.org, Sept. 7, 2004, www.nkrusa.org/news/articles_interviews.shtml.

⁸⁵ "Meltdown Response: Ecuador Erects Trade Barriers," AP, Mar. 2, 2009; Elisabeth Malkin, "Echoes of the Civil War in El Salvador Campaign," IHT, Mar. 13, 2009; "Prices Start to Fall in Zimbabwe After Switching to Using US Dollar," SCMP, Mar. 26, 2009.

⁸⁶ See "China Old Map 1936 JPG," commons.wikimedia.org/wiki/File:China_old_map_1936.jpg.

⁸⁷ Hung-mao Tien. *Government and Politics in Kuomintang China, 1927-1937* (Stanford: Stanford University Press, 1972): 5, 95.

⁸⁸ Chan Shiu-hon, *Colour-Illustrated Stamp Catalogue of China (1878-1949)*, 2 volumes, 2000.

⁸⁹ Megan Neil, "Bounty Island Pitcairn Looks to Tourism After Trials," AAP Newsfeed, Oct. 1, 2004; "A Philatelic Boom for the Empire's Tiny Outposts," *The Times*, Apr. 18, 2006.

postage stamps.⁹⁰ China's Hong Kong and Macao each have their own flags, currencies, passports, and postal services,⁹¹ but neither is regarded as a state.

Existing pseudo-states issue passports, currency, and stamps,⁹² yet the items have no validity under international law. As to passports, for example,

an unrecognized state or government is considered to have no authority to issue passports. Documents issued by unrecognized states or governments are not regarded as 'passports.' They are accorded no official standing; generally no visa is affixed on an unrecognized passport, or if a visa is affixed, such action is expressly said not to imply recognition of the issuing authority.⁹³

Occasionally, a pseudo-state will issue a passport that manages to get a visa from unwitting or corrupt officials of a state. For example, the "Chancellor" of a "state" created mainly for the amusement of its self-appointed "officials," "The Republic of Lomar," made up of 4,000 "cybercits" based among hi-tech professionals in California's Silicon Valley, has said that "Lomarian passports have already been used to enter Cuba and Russia."⁹⁴ If so, issuance of the visas was clearly *ultra vires* -- beyond the powers these governments vested in low-level consular or immigration officials who, through mistake or corruption, issued the visas.

Tibetan exile leaders make much of members of a 1948 Tibetan trade mission to the US and UK receiving visas on Lhasa-issued passports, from consular officers who ignored or misunderstood their governments' instructions. The US had already decided that in deference to Chinese sovereignty, it would receive the trade mission only informally⁹⁵ and the State Department asked that the visitors be accompanied by Chinese diplomats during their tour. The UK made it clear that it did not recognize the travelers as part of a trade mission and would only let them enter Britain as distinguished individuals, without reference to whether they even had passports. The UK stated that the visas were issued in error and noted that the same persons had just travelled to China via India and Hong Kong using Chinese passports. The US and UK were adamant that in admitting the Tibetans in question, they were not recognizing Tibet as a state and would not recognize its purported passports in the future.⁹⁶

⁹⁰ Norman Berdichevsky, "The Faroe Islands: an Ancient Nordic and Atlantic Nation," *The World and I* 23:5 (2008).

⁹¹ *Basic Law of the Hong Kong Special Administrative Region*, <http://www.basiclaw.gov.hk/en/index/>; *Basic Law of the Macao Special Administrative Region*, http://bo.io.gov.mo/bo/i/1999/leibasica/index_uk.asp.

⁹² "The Secret State," Al Jazeera, Sept. 29, 2008; "Africa's Isolated State," Al-Jazeera, July 20, 2008.

⁹³ Annalisa Meloni, *Visa Policy Within the European Union Structure* (Berlin: Springer, 2006) (focusing particularly on US and UK practice):28. A passport may be regarded as only a travel document and, if so, nationality is conceptually severable from it. David Warner, "Challenges to International Law Enforcement Cooperation for the United States in the Middle East and North Africa: Extradition and Its Alternatives," *Villanova Law Review* 50 (2005):479-508. The US issues visas to immigrants with "unrecognized passports," which it regards only as "travel documents." See US Embassy, Djibouti, "Visas to U.S.," <http://djibouti.usembassy.gov/specialrequirements.html>.

⁹⁴ Ian MacLeod, "Brave New Worlds," *Ottawa Citizen*, Apr. 3, 2000.

⁹⁵ Melvyn Goldstein, "The United States, Tibet and the Cold War," *Journal of Cold War Studies* (JCWS) 8:3 (2006):145-164 (147).

⁹⁶ Tsering Shakya, "1948 Tibetan Trade Mission to United Kingdom," in Alex McKay, *The History of Tibet* v. 3 (London: Routledge Curzon, 2003):573-585; Goldstein, A History:586-587.

Indeed, under international law, the issuance of a visa cannot imply recognition, because even exchanges of unofficial representatives, exchanges of letters and memoranda, admission to international organizations and participation in international conferences all fall short of expressing the requisite intent to recognize a territory as a state.⁹⁷ Thus, participation of representatives of the Lhasa government at the Asian Relations Conference in India in 1947, often held up by Tibetan émigré leaders as an indicator of old Tibet's statehood,⁹⁸ did not mean the attending states thereby recognized Tibet as a state. Indeed, Indian Prime Minister Jawaharlal Nehru stated in parliament on May 15, 1954, "Over the past several hundred years, as far as I know, at no time has any foreign country denied Chinese sovereignty over Tibet."⁹⁹

Discussing pre-1950 maps that show Tibet as separate from China, Norbu notes only one in the modern era, a stained glass globe in the lobby of the Christian Science Publishing Society in Boston, USA. The view of a private mapmaker about what is and is not a state is of little consequence compared to the views of states and international organizations and many maps issued in Western and Asian countries show Tibet as part of China.¹⁰⁰ China's Qing Dynasty mapmakers, who originally were mainly European Jesuits, produced highly detailed maps that clearly indicated borders and the emperors' spheres of sovereignty, which included Tibet.¹⁰¹

Also of little consequence are diplomats whose views of Tibet as independent were not adopted by their own governments. Norbu quotes a retrospective (1953) opinion of Shen Tsung-lien that Tibet was independent. When Shen was ROC representative in Tibet (1944-1949), his government's view, which Shen as its agent was bound to espouse, was that Tibet was "an inseparable part of Republican Chinese territory."¹⁰² The ROC constitution continues to recognize that Tibet is part of China.¹⁰³

V. Did Tibet Fulfill the Accepted Criteria of Statehood?

Questions of statehood are ultimately legal issues, albeit ones in which political considerations often underpin decisions on whether to regard a territory as a state through recognition. But because the statehood issue is one decided using legal criteria, it is important to recognize that international law is clear that there are no "de facto states." As Frank Chiang, a pro-Taiwan independence professor of law at Fordham University in the United States, observes

⁹⁷ Sir Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947):346

⁹⁸ Tsering Tsomo and Shankar Sharan (eds.), *Tibet Since the Asian Relations Conference* (New Delhi: Tibetan Parliamentary & Policy Research Centre, 1998).

⁹⁹ Quoted in Radnadeep Banerji, "The Trampling of Tibet," *The Organiser* (India), Oct. 5, 2008.

¹⁰⁰ For examples, see "Maps Tell the Truth: Tibet is Part of China," http://www.youtube.com/watch?v=uVibXLs_OQk; "Xizang (Tibet) was Not Party of China Before 1950s?" <http://newschecker.blogspot.com/2008/03/xizang-tibet-was-not-part-of-china.html>.

¹⁰¹ Niu Ruchen, "Ditu zhuquan jiazhi lun" (On the value of sovereignty in maps), *Cehui Kexue* 30(4) (2005):106-109.

¹⁰² Lin Hsiao-ting, *Tibet and Nationalist China's Frontier: Intrigues and Ethnopolitics* (Vancouver: University of British Columbia Press, 2006):12.

¹⁰³ Constitution of the Republic of China, <http://www.gio.gov.tw/info/news/constitution.htm>. See also *South China Morning Post*, "Tibetans in Taiwan Appeal for Residency," Jan. 1, 2009.

According to international law, Taiwan is not a state. Although many people have claimed that Taiwan is a ‘de facto state,’ such a status does not exist in the theories of states or international law. A political entity is either a state or it is not. There is nothing in between.¹⁰⁴

Claims that there are “de facto states” and “de facto independence” are “at most, *de lege ferenda* -- what someone wants the law to be, not what it is” [*de lege lata*].¹⁰⁵ That there are no “de facto states” has not kept those who fail to take international law into account from proposing that the concept be adopted. The leading proponent, Indiana University political scientist Scott Pegg, has written

A *de facto* state exists where there is an organized political leadership which has risen to power through some degree of indigenous capability; receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a specific territorial area, over which effective control is maintained for a significant period of time. The *de facto* state views itself as capable of entering into relations with other states and it seeks full constitutional independence and widespread international recognition as a sovereign state. It is, however, unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society.¹⁰⁶

The concept of “de facto state” that Pegg enunciates is impossible to realize in practice however, because the first sentence of his definition applies just as much to local governments as it does to aspirants for statehood. Old Tibet moreover would not meet the second part of the definition. As will be shown, its political elite did not consistently seek independence or widespread international recognition as a state. The “de facto state” concept is in fact part of a *political* argument that territories should have the option to become states if they have separated or may separate from a recognized state. It is an attempt to conceptually undergird separatism in general. Not coincidentally, Pegg was keynote speaker at a conference of the Unrepresented Nations and Peoples Organization (UNPO), an agglomeration of separatists founded by the Dalai Lama’s legal advisor Michael van Walt van Praag and headed, through most of its existence, by either van Walt or Tibetan and Uygur separatist leaders.¹⁰⁷

Scholars use the term pseudo-state to emphasize that a claim of a territory to be a state is inapt if it fails to meet standard criteria for statehood and is unrecognized. The terms “de facto state” and “quasi-state” imply that but for recognition a territory would be a state, but it is often the other way around: non-recognition is itself typically the result of a territory lacking the attributes of a state. Thus, when China was weak and other states would have lost little in terms of their relations with China

¹⁰⁴ Frank Chiang, “Sadly, Taiwan is Still Not a State,” *Taipei Times*, Mar. 12, 2005. Chiang argues that a territory cannot be a state without declaring itself as such and seeking recognition on that basis.

¹⁰⁵ Yael Ronen, “Review, Michael Schoiswohl, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law,” *American Journal of International Law* (AJIL), 99 (2005):953-959.

¹⁰⁶ See, e.g., Scott Pegg, *International Society and the De Facto State* (Aldershot: Ashgate, 1998):26.

¹⁰⁷ “Opening the World Order to DeFacto States,” Conference at the European Parliament, Brussels, May 15, 2008.

by recognizing old Tibet as a state, they did not do so. As will be shown below, that is because they had sound reasons to conclude that Tibet lacked the attributes of a state.

As early as 1908, the US disavowed Tibet independence when its Ambassador to China, the Tibetologist William Rockhill, met the 13th Dalai Lama in Shanxi province, where the Dalai Lama had gone after four years of exile brought on by a British invasion of Tibet. Rockhill urged him “to accept his ‘vassal’ status and return to Lhasa.”¹⁰⁸ After meeting the Guanxu Emperor and Empress Dowager in Beijing, the Dalai Lama was “put on retainer and ordered to return to Lhasa and obey the Chinese governor, or *amban*.”¹⁰⁹ When the Dalai Lama again fled Lhasa, in 1910, seeking protection by the British Indian government, Rockhill wrote to him that “Tibet is and must remain a portion of the *Ta Tsing* [Qing Empire] for its own good.”¹¹⁰ Rockhill also stated that year that the Tibetans had been “perfectly satisfied” with the autonomy Manchu emperors had provided Tibet for the last 150 years and they

had raised no claim for total or even greater independence of China, no wish to deprive themselves of the aid and guidance of China, no dissatisfaction with the reforms of 1793, which were well suited to the requirements of the country and the customs of the people.¹¹¹

In 1933 and 1937, Pres. Franklin Roosevelt declined proposals to communicate with the Lhasa government. In 1942, when he sent two US Army junior officers to Tibet to seek a supply route to Chinese armies fighting Japan, Roosevelt recognized the Chinese government’s inclusion of Tibet in its territory and provided the officers with a letter of introduction addressed to the Dalai Lama only in his spiritual role.¹¹²

No state has since recognized the TGIE, which the US government referred to in 1994 as “the self-styled ‘Tibetan Government in Exile.’”¹¹³ A US official has stated

The United States considers the Tibet Autonomous Region or TAR . . . as part of the People's Republic of China. This longstanding policy is consistent with the view of the entire international community, including all China's neighbors: no country recognizes Tibet as a sovereign state. Moreover, US acceptance of China's claim of sovereignty over Tibet predates the establishment of the People's Republic of China. In 1942, we told the Nationalist Chinese government . . . that we had ‘at no time raised (a) question’ over Chinese claims to Tibet. Because we do not recognize Tibet as an independent state, the United States does not conduct diplomatic relations with the representatives of Tibetans in exile.¹¹⁴

¹⁰⁸ John Kenneth Knaus, “An Uncertain Ally: the US Government and Tibet,” *Harvard Asia Quarterly* 4:3(2000), <http://www.asiaquarterly.com/content/view/77/40/>.

¹⁰⁹ Karl Meyer, “Close Encounters of an American Kind: William Woodville Rockhill in Tibet,” *World Policy Journal* 15:4 (1998-1999):73-90 (86).

¹¹⁰ Knaus, An Uncertain.

¹¹¹ William W. Rockhill, *The Dalai Lamas of Lhasa and their Relations with the Manchu Emperors of China, 1644-1908* (Dharamsala: Library of Tibetan Works & Archives, 1998 [originally published in Leiden by Oriental Printing Office, 1910]:74-75,

¹¹² Knaus, An Uncertain; Goldstein, *The United States*:146.

¹¹³ US State Department, *Relations of the United States with Tibet* (Washington: USSD, 1995):4.

¹¹⁴ “Testimony of Kent Wiedemann, Deputy Assistant Secretary of State for East Asian and Pacific Affairs, before the Sub-Committee on East Asian and Pacific Affairs, Senate Foreign Relations Committee, Sept. 5, 1995,” <http://dosfan.lib.uic.edu/ERC/bureaus/eap/950907WiedemannTibet.html>.

In 1943, in refutation of a British official's memo questioning whether Tibet was part of China, Acting US Secretary of State Adolph Berle told the US Ambassador in China that "Politically and in law Chinese claims regarding Tibet stand on far firmer ground than do British claims."¹¹⁵ The US has also disavowed the TGIE agenda. In 1987, Deputy Secretary of State for East Asian and Pacific Affairs J. Stapleton Roy stated "when he [the Dalai Lama] advances a political program for Tibet, which we consider to be part of China, the US government cannot support him."¹¹⁶

The states that have not recognized old Tibet as independent and do not recognize the TGIE include those, such as Saudi Arabia, South Africa, and South Korea, that fostered aggressive Cold War anti-communist activities,¹¹⁷ as well as many states that over the past six decades have not recognized the PRC as China's government. They too had little to lose by recognizing the Tibetan exile administration, but did not do so. As late as the mid-1990s, 20 African states had no relations with the PRC, yet none of these states that recognized Taiwan instead of the PRC also recognized the TGIE.¹¹⁸ Even after then-president Chen Shui-bian declared that his pro-Taiwan independence administration no longer regarded Tibetans as Chinese citizens¹¹⁹ – and thus purported to renounce the provision of the constitution that includes Tibet as part of the ROC, none of the states that recognized the ROC recognized the TGIE.

VI. Theories of State Recognition: Declaratory and Constitutive

There are two international law theories of state recognition, declaratory and constitutive, but they are not wholly in opposition to each other. A leading international law scholar advises that "to reduce . . . the issues to a choice between the two opposing theories is to greatly oversimplify the legal situation."¹²⁰ A specialist on recognition of states has said that the realities of state practice show that no strict dichotomy exists between realist constitutivism and idealist declaratory theory.¹²¹

The declaratory theory views recognitions of new states by pre-existing states as political acts that do not determine whether territories are states. Rather, customary international law arising from uniform, consistent practices of states that create widely held beliefs that such practices are obligatory (*jus cogens*), sets out requirements of statehood expressed in four criteria of Article 1 of the Montevideo Convention on the

¹¹⁵ "The Acting Secretary of State to the Ambassador in China," Sept. 29, 1943, <http://72.14.235.132/search?q=cache:8wKdODWUJqwJ:images.library.wisc.edu/FRUS/EFacs/1943China/reference/frus.frus1943china.i0012.pdf+%22acting+secretary+of+state%22+%22september+29+1943%22+tibet&cd=1&hl=en&ct=clnk>.

¹¹⁶ J. Stapleton Roy, "Human Rights Situation of the Tibetan People," *US Department of State Bulletin* (Dec. 1987), http://findarticles.com/p/articles/mi_m1079/is_n2129_v87/ai_6285385/pg_3/.

¹¹⁷ See "World Anti-Communist League," Right Web, 1990, <http://www.rightweb.irc-online.org/gw/2815.html>.

¹¹⁸ Rohit Negi, "Beyond the 'Chinese Scramble': The Political Economy of Anti-China Sentiment in Zambia" *African Geographical Review* 27 (2008):41-63.

¹¹⁹ "Taiwan says it no longer Considers Tibetans to be Mainland Chinese," AP, Jan. 20, 2003.

¹²⁰ Ian Brownlie, *Principles of Public International Law*, 6th ed. (Oxford: Clarendon, 2003):88.

¹²¹ Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution* 22 (Westport: Praeger, 1999):22.

Rights and Duties of States (1933).¹²² Using these criteria, states declare “as a fact something which has hitherto been uncertain” -- that a territory is a state.¹²³

The Montevideo Convention criteria -- a permanent population, a defined territory, a government and a capacity to enter into relations with other states -- provide an “objective” test of statehood applied without reference to whether a territory is recognized or not. Under its Article 3, statehood can exist prior to recognition, because “even before recognition the state has the right to defend its integrity and independence.” A territory that declares itself a new-born state is thus not denied the right to defend itself merely because it has not had enough time to get recognized. In practice, however, an unrecognized territory soon comes to be disregarded as a state under the Convention, because it is seen as lacking the capacity to enter into foreign relations. That was the import of the Canadian Supreme Court’s statement that if an unconstitutional declaration by Quebec were to lead to a “de facto secession,” “the ultimate success of such a secession would be dependent on recognition by the international community . . . [although] such a recognition, even if granted, would not, however, provide any retroactive justification for the act of secession.”¹²⁴

The constitutive theory holds “it is the act of recognition by other states that creates a new state . . . and not the process by which it actually obtained independence.”¹²⁵ Under this theory, at the moment a territory declares itself a state, it is at most a proto-state that becomes a state, if at all, only if it accumulates significant recognition by other states. Thus, even a territory that does not obviously fulfill the Convention’s criteria may yet be widely (and judicially) regarded as a state because most states recognize it. That has been the case with the Holy See (the Vatican).¹²⁶

The declaratory theory prevailed before the 1990s,¹²⁷ when the constitutive theory gained ground. By then, four European mini-territories, Andorra, Liechtenstein, Monaco and San Marino, which previously were not seen as fulfilling the Convention definition of a state, attained statehood through recognition and were admitted to the UN between 1990 and 1993.¹²⁸ The Soviet and Yugoslav breakups gave further impetus to the constitutive theory. After the Soviet collapse, the UN Security Council did not consider Latvia, Lithuania, and Estonia’s applications for recognition and membership until the Soviet Union agreed to recognize these formerly Soviet Baltic republics as independent.¹²⁹ Whether the ex-Yugoslav republics were states came to be determined by the outcome of debates about recognition among European states. Certain EU states’ recognition of Croatia and Slovenia were eventually followed by other states, which later recognized the independence of additional ex-Yugoslav

¹²² 1933 L.N.T.S 19, U.S.T.S No, 881, 28 A.J.I.L. Supp 75, art. 1 (1934).

¹²³ James L. Brierly, *The Law of Nations*, 6th ed. (Oxford: Clarendon Press, 1963):139.

¹²⁴ Secession of Quebec:296

¹²⁵ Malcolm Shaw, *International Law*, 5th ed., (2008):368.

¹²⁶ See Yasmin Abdullah, “The Holy See at United Nations Conferences: State or Church?” *Columbia Law Review* 96 (1996):1835 (Holy See does not meet Montevideo criteria, yet 172 states recognize it).

¹²⁷ Ian Brownlie, *Principles of Public International Law*, 2d ed. (Oxford: Oxford Clarendon, 1973):93.

¹²⁸ Jorri C. Duursma, *Fragmentation and the International Relations of Micro-States* (Cambridge: Cambridge University Press, 1996); United Nations Information Service, “United Nation Member States,” http://www.unescap.org/unis/Thai/l37_members.pdf (dates of admission of UN member states).

¹²⁹ James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press):394

republics as well.¹³⁰ The EU issued guidelines for recognition conditioned it on the new states showing respect for minority rights and the maintenance of existing boundaries, conditions that clearly went beyond use of the Montevideo criteria to determine statehood. Even after recognition by EU and other key states, Yugoslavia's ex-federal republics were not admitted to the UN until Serbia-Montenegro adopted a new constitution that renounced its territorial claims to the former republics. The UN and prominent states could then accept that Yugoslavia had been dissolved.¹³¹

Recognition and not mere fulfillment of objective criteria in effect created new states from the Soviet and Yugoslav dissolutions. States regard recognition has having crucial symbolic importance,¹³² but much more than that: "no new State formed since 1945 outside the colonial context has been admitted to the United Nations over the opposition of the predecessor State."¹³³ Bangladesh declared independence after a war of secession from Pakistan, but the UN admitted it only after Pakistan recognized it¹³⁴ and "In all other cases which might otherwise be classified as unilateral secession (Senegal, Singapore, the Baltic States and Eritrea) the consent of the relevant parties was given before independence was externally recognized as accomplished [and] secession was expressly agreed to by the parties directly concerned."¹³⁵

Thus, recognition is in practice so essential to statehood that even recognition by a group of prominent states is not necessarily sufficient to provide the rights that come to a territory when it is widely judged to have an undisputed international personality. Recognition is thus at least semi-constitutive, because where there are doubts about whether a territory fulfills the declaratory theory's criteria, widespread recognition will constitute the proverbial tipping point to statehood, while non-recognition is often a realization by states that a territory has failed to fulfill the traditional criteria of statehood.¹³⁶ Malcolm Shaw, author of a leading international law treatise, has stated

[T]he role of recognition, at least in providing strong evidential demonstration of satisfaction of the relevant criteria, must be acknowledged . . . There is also an integral relationship between recognition and the criteria for statehood in the sense that the more overwhelming the scale of international recognition is in any given situation, the less may be demanded in terms of the objective demonstration of adherence to the criteria. Conversely, the more sparse international recognition is,

¹³⁰ See Warren Zimmermann, "The Last Ambassador: A Memoir of the Collapse of Yugoslavia," *Foreign Affairs* (Mar./Apr. 1995): 2, 16-17 (role of European Community's recognition of Slovenia and Croatia in precipitating war in Bosnia). Although the post-breakup entities generally fulfilled the four Montevideo Convention criteria, the EU decided they were not in themselves the *sine qua non* of statehood and set out guidelines on recognition conditioning it on respect for human rights. *Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union*, 31 I.L.M. 1486 (1992).

¹³¹ Crawford, *The Recognition*:397-399.

¹³² See Thomas Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990):112-116.

¹³³ Crawford, *The Recognition*:415.

¹³⁴ Crawford, *The Recognition*:158, 393.

¹³⁵ Anne Bayefsky, *Self-Determination in the International Law: Quebec and the Lessons Learned* (Hague: Martinus Nijhoff, 2000):59. For example, Ethiopia sponsored Eritrea's 1993 admission to the UN. Id. 51. The Indonesian People's Consultative Assembly accepted East Timor's independence. See UN Security Council Resolution 1272, 12 UN Doc./S/RES/1272 (1999).

¹³⁶ Michael Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: the Case of Somaliland* (Leiden: Martinus Nijhoff, 2004).

the more attention will be focused upon proof of actual adherence to the criteria concerned.¹³⁷

Even if statehood could emerge absent recognition, a state's exercise of rights may be ineffective unless other states recognize it. While recognition may be based on the criteria underlying the declaratory theory, the inability of a territory that otherwise satisfies the criteria to exercise sovereign rights indicates the constitutive theory's continuing relevance and perhaps determinative nature¹³⁸ and under it unrecognized Tibet was not a state. Tibet's putative statehood should nonetheless be tested under the declaratory theory's Montevideo Convention criteria as well.

A. A Permanent Population

While states always have people, the criterion is not as simple as that. People in a territory are typically citizens of both a locality (such as a province) and a national state. In that sense, Tibetans can be regarded as both the bulk of the population of Tibet and a part of China's population. Not only the Chinese government,¹³⁹ but also all states and international organizations have regarded Tibetans that way.¹⁴⁰ Note that this and the other criteria are objective (citizenship), not subjective (identification with the state); for it to be otherwise would invite secession whenever identities shift.

States and international organizations regard the whole people of each state as its population, yet discrete sections of populations of countries may not fully identify as part of a state's population. They may come to do so however as political and social conditions change. The historian Joseph Ellis has noted that in the initial decades after US was founded, "most Americans did not regard themselves as Americans. They regarded themselves as Virginians, or New Englanders, or Georgians." That view gradually receded after the US Civil War.¹⁴¹ Until the 1960s, people of Mexican descent born in the US and thus US citizens, nonetheless neither identified themselves nor were identified by others as Americans.¹⁴² Similarly provincial and local, not national identity was common throughout China in the first half of the 20th Century.¹⁴³

Many central/western Tibetans had only a local identity before 1951, but part of the elite, including monks, had long been "pro-China" and much of it was prepared to regard Tibetans as Chinese citizens when China's re-establishment of its authority loomed.¹⁴⁴ Many eastern Tibetans already recognized they were Chinese citizens or at

¹³⁷ Malcolm Shaw, *International Law*, 4th ed. (Cambridge: Cambridge University Press, 2003):146-147.

¹³⁸ See Brad Roth, *Governmental Illegitimacy in International Law* (Oxford: Oxford University Press, 2000):129.

¹³⁹ "Tibet- Its Ownership and Human Rights Situation," XH, Sept. 22, 1992.

¹⁴⁰ See, e.g., David Kramer, "A Rights Agenda for China," *Wall Street Journal*, Feb. 17, 2009 (quoting US Secretary of State Hilary Clinton, speech to the Asia Society, Feb. 13, 2009, referring to the right of "Tibetans and all Chinese people" to religious freedom).

¹⁴¹ Joseph Ellis, "2008 U.S. Elections: Historical Tipping Point and Evolutionary Perspective, Part I," <http://personallifemedia.com/podcasts/212-living-dialogues/episodes/3489-joseph-ellis-2008-u-s-elections>.

¹⁴² "The Cinco de Mayo Interview' [with Dr. David Conde], May 13, 2006 <http://www.cafemundo.net/index.cfm/ID/8/iItemID/17>.

¹⁴³ Peter Zarrow, *China in War and Revolution, 1895-1949* (London: Routledge, 2005):135.

¹⁴⁴ Shakya, *Dragon*:6; *Palace, The British*:63.

least did not regard themselves as part of Tibet's population.¹⁴⁵ Dalai Lamas had secular authority on the central-western Plateau, but not in most of its eastern regions, Kham and Amdo, which were governed by non-Tibetan warlords or local Tibetan rulers for one to two centuries before the mid-20th Century. More than half of all Tibetans were not ruled by the Lhasa government. Tibet (*Bod*) traditionally referred to only a central Tibetan area around Lhasa. Tibetans distinguished those under Lhasa's government (*Bod Pa*) from ethnic Tibetans who revered the Dalai Lama regardless of whether they were under his jurisdiction (*Bod KHa Pa*).¹⁴⁶ Yet, "even the religious authority of Lhasa vested in the [Dalai Lama's] Gelugpa sect was not necessarily acknowledged in [eastern Tibetan] areas, where the prevailing sectarian orientation was towards the Bon faith, or other Buddhist sects such as the Nyingma."¹⁴⁷

Lhasa's rule was resented in eastern areas in the time of the Dalai Lamas. A pro-Tibet independence British writer, speaking of Kham, has stated that

The attitude of the ferociously independent Khampa warrior-chiefs to rule by what they regarded as effete and arrogant aristocrats from Lhasa was about as enthusiastic as that of [the Welsh nationalist] Plaid Cymru or the Scottish Nationalist Party to rule from London.¹⁴⁸

A study of Qinghai province -- which today covers most of Amdo -- by a leading Australian China specialist, concludes that

Tibetans in Qinghai have long regarded themselves as both socially and politically separate from those in Central Tibet . . . Qinghai Tibetans readily acknowledge, and to a certain extent celebrate, that after the end of the Tibetan (Tubo) Empire in the ninth century they were never again 'ruled by any one leader as a united people' and certainly not under Lhasa's control.¹⁴⁹

In the first half of the 20th Century, Lhasa's army fought Tibetans led by eastern chieftains and each separately fought non-Tibetan warlord armies.¹⁵⁰ There were 400-500 major battles in Kham from 1911-1935: "armed guerrilla forces increasingly occupied the central Tibetan military [while] fighting intensified after the death of the 13th Dalai Lama in 1933."¹⁵¹ Tsering Shakya notes that in 1950, "the Communists

¹⁴⁵ For a flavor of the distinct ethnic consciousness of one group of eastern Tibetans, see the novel by the Tibetan/Hui writer Alai, *Red Poppies* (New York: Houghton Mifflin, 2002).

¹⁴⁶ Melvyn Goldstein, "Change, Conflict and Continuity among a Community of Nomadic Pastoralists: Case Study from Western Tibet, 1950-1990," in Robert Barnett and Shirin Akiner, eds, *Resistance and Reform in Tibet* (London: Hurst, 1994):76-90; Geoffrey Samuel, *Civilized Shamans: Buddhism in Tibetan societies* (Washington: Smithsonian, 1993):142-145; Yu Zhen & Guo Zhenlin, *Zhongguo Zangqu Xiandaihua: Lilun, Shijian, Zhengce* (Modernization of China's Tibetan Areas: Theory, Practice, Policy) (Beijing: Zhongyang minzu daxue chubanshe, 1999):37-38; Robert Ekvall, "The Tibetan Self-image," *Pacific Affairs* 33:4 (1960):375-383.

¹⁴⁷ Alex McKay, *Tibet and*:197.

¹⁴⁸ Mary Craig, *Tears of Blood: a Cry for Tibet* (Washington: Counterpoint, 1999):55.

¹⁴⁹ David Goodman, "Qinghai and the Emergence of the West: Nationalities, Communal Interaction and National Integration," *China Quarterly* no. 178 (2004):379-399,

¹⁵⁰ Carole McGranahan, "Empire and the Status of Tibet: British, Chinese and Tibetan Negotiations, 1913-1934," in Alex McKay, ed., *The History of Tibet*, v. 3 (London: RoutledgeCurzon, 2003), 267-295; James Leibold, *Reconfiguring Chinese Nationalism: How the Qing Frontier and Its Indigenous Became Chinese* (New York: Palgrave Macmillan, 2007):71-72.

¹⁵¹ Roemer, *The Tibetan*: 27.

were able to win over the vast majority of the Khampas and enter Kham without any resistance. In fact many Khampas were willing to assist the PLA's entry into Tibet",¹⁵²

Before 1951 then, most Tibetans were not under the jurisdiction of the Lhasa government and even those who were under it were regarded by all recognized states and the UN as being under China's jurisdiction. In that sense, Tibet did not have a permanent population separate from China's permanent population.

B. A Defined Territory

Every state must have a territory over which it exercises its sovereign and independent authority. If, however, the entire territory under custody of a putative "state" (for example, the Lhasa government) was owned or claimed by another political entity (China), then the so-called "state" was not a state at all, because it was doubtful that it owned a territory. To claim statehood, a political entity must own territory free from claims by any other entity. Indeed, the UN requires for admission that an entity that applies must be essentially free from serious claims over its entire territory (as opposed to claims over part of it).¹⁵³ China claims the entire Tibet Plateau and no modern, recognized state has disagreed on that score.

Only if the Chinese government abandoned its sovereignty over Tibet would the Tibet Plateau have become the Lhasa government's territory. It never did so.¹⁵⁴ As an Indian historian of modern Tibet, Parshotam Mehra, has put it

[China in 1913-1951] refused to yield any ground on its theoretical claims to Tibet as an integral part of the mainland, and mounted tireless efforts to give these shape and form. The idea of war supplies via Tibet to a beleaguered Chinese regime or massing of troops in the provinces bordering on Tibet or planning airfields there to pressurize Lhasa were part of the same plan. Some of the 1943-44 exchanges . . . in which both Whitehall as well as the State Department were involved demonstrate that even a hard-driven Guomindang regime was uncompromising in its resolve to incorporate Tibet into the larger whole of the motherland.¹⁵⁵

Instead, the Lhasa government was indifferent to the Chinese government's re-assertion of its authority over the eastern Tibet Plateau as the Chinese civil war drew to a close in 1949. Goldstein has stated that "the Tibetan Government in 1949 . . . did not consider the Chinese Communist conquest of China (including Amdo and much of Kham) as an invasion of its territory. As a result, in 1949 it neither sent its troops to defend these areas nor issued any protests, appeals or charges that its territory had

¹⁵² Shakya, *Dragon*:40.

¹⁵³ Crawford, *The Creation*:36-38.

¹⁵⁴ The closest that a Chinese leader ever came to doing so was after the 1959 uprising in Lhasa, when Chiang Kai-shek stated that Tibetans should have "the right to determine their own future." US State Department, *Foreign Relations of the United States 1958-1960* [FRUS], China:756-757. That statement was likely part of the effort to use the UN General Assembly, the CIA-financed International Commission of Jurists and other organizations to attack China at a time when the US and ROC perceived China as weakened by the aftermath of the Great Leap Forward. The ROC only controlled Taiwan and Chiang's statement was not accompanied by ROC recognition of the TGIE.

¹⁵⁵ Pershotam Mehra, "Article Review: Mehra on Zhai, JCWS 8.3" H-Diplo, Sept. 9, 2007, <http://www.h-net.org/~diplo/reviews/PDF/Mehra-Zhai.pdf> (page 5).

been invaded.”¹⁵⁶ That was almost to be expected, given the disdain that central Tibetan elites had for *Andowa* and *Khamba*. Shakya notes the “traditional prejudice against the Khampas. For many people in *U-Tsang* (central-west Tibet), Khampas were considered to be bandits (*jag-pa*) and [in the mid-1950s] were more [a] problem than the Chinese.”¹⁵⁷ Exile historian Samtsen Karmay observed that “Since 1720, Amdo has been completely detached from the mainstream of political life in Central Tibet, although never totally culturally alienated” and that the former Lhasa nobility and government “displayed a scornful attitude . . . toward the people of Amdo.”¹⁵⁸

From the fall of last imperial dynasty (1911) to the re-establishment of a unified China in 1949, the whole of China was in constant turmoil from civil war and foreign invasion. Yet, the states of the world continued to regard the territory encompassed by the Tibet Plateau as China’s territory. While the Lhasa government was able to exercise domestic authority in part of that territory, it was doing so, from the official perspective of the world’s states and UN, on behalf of China and thus it did not control a defined territory separate from China’s defined territory.

C. A Government

A state must have a government that exercises effective public authority and sovereignty. The government “has two aspects: the actual exercise of authority, and the right or title to exercise that authority.”¹⁵⁹ In 1913-1951, the Lhasa government actually exercised authority, but did not have the right or title to exercise it as a state.

When Rhodesia declared independence from Britain in 1965, its white racist regime acquired no legal right or title to govern and thus Rhodesia was not recognized as a state, even though its government had effective control over the territory and population.¹⁶⁰ Conversely, when the now-Democratic Republic of Congo gained independence from Belgium in 1960, its government “was bankrupt, divided, and in practice hardly able to control even the capital,” yet it was recognized as a state because it had a legal right and title to govern the territory.¹⁶¹ Somalia has remained a state and UN member even though for the past two decades it has lacked a national government able to control much of its territory, while the breakaway Somaliland, with a functioning government, is unrecognized and regarded by all states and the UN as part of Somalia.¹⁶² Moreover, when a well-recognized state’s territory is overrun and annexed by another state and the conquered state’s government ceases to function on its territory, as happened to Kuwait in 1990, it still remains a state.¹⁶³

¹⁵⁶ Melvyn Goldstein, “Change, Conflict and Continuity Among a Community of Nomadic Pastoralists: a Case Study from Western Tibet, 1950-1990,” in Barnett and Akiner, *Resistance*:76-111 (86).

¹⁵⁷ Shakya, *Dragon*:173-174,

¹⁵⁸ Samtsen Karmay, *The Arrow and the Spindle: Studies in History, Myths, Rituals and Beliefs in Tibet* (London: Mandala Book Point, 1998):529.

¹⁵⁹ Crawford, *The Creation*:44.

¹⁶⁰ John Dugard, *Recognition and the United Nations* (Cambridge: Grotius, 1987):97-98.

¹⁶¹ Crawford, *The Creation*:43-44.

¹⁶² Ian Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press, 1990): (a state’s existence is not contingent upon its ability to maintain order or resist foreign invasion; Somalia remains a state even in the absence of a unified central government); Michael Schoiswohl, *Status and (Human Rights) Obligations of Non-recognized De Facto Regimes in International Law: The Case of Somaliland* (Leiden: Martinus Nijhoff Publishers 2004).

¹⁶³ Louis Henkin et al., *International Law: Cases and Materials* (New York: West, 1993):247 (“Kuwait remained a state notwithstanding its occupation and putative annexation by Iraq in 1990”).

In line with these principles, when a state's central authority is absent from part of its territory, because it has been weakened by civil war or invasion, the state is still legally entitled to recover the territory.¹⁶⁴ Manchuria -- three provinces of northeast China that were the historical homeland of the Manchus, were separated from China from 1931 to 1945 after the establishment of the Japanese-occupied pseudo-state of Manchukuo. The conception of Chinese that Manchuria as part of the country was so strong however that China mobilized "in the defense of the Manchu homeland into which Chinese settlement had been permitted only since 1907. And it convinced the rest of the world not to legitimize Japan's conquest."¹⁶⁵ Hong Kong, taken from China as a result of the Opium Wars (1839-1842, 1856-1860), remained outside its control for a century and a half. Yet, as a colonial enclave, it remained legally subject to reversion to China whenever the latter became capable of securing its return.¹⁶⁶ Northern Cyprus was first separated from the rest of the Cyprus by Turkey's 1974 incursion and in 1983 the TRNC was proclaimed. The UN called upon all states to not recognize it¹⁶⁷ and declared that the northern area is part of the Republic of Cyprus, which is entitled to reclaim it. No state, except Turkey, has recognized the TRNC.¹⁶⁸

The Afghan government only controls 30% of Afghanistan's territory, with 10% controlled by the Taliban and the rest by warlords.¹⁶⁹ Warlord control over most of the country has existed for at least three decades, yet no one argues that warlord-controlled territory is no longer part of Afghanistan. India regards all of Kashmir as its territory,¹⁷⁰ although Azad ("Free") Jammu & Kashmir, an area with a functioning administration over some three million people, has existed since 1949 outside India's control and without being absorbed into Pakistan.¹⁷¹ Despite its de facto separate administration, neither the UN nor the world's states have deemed Azad Jammu & Kashmir to not be part of India.

It does not matter whether Old Tibet's Lhasa government was strong or weak, effective or ineffective, in administering the area it controlled. As Oyvind Osterud, the Norwegian geo-politics specialist has noted, "State sovereignty is constitutional independence, not empirical independence or strength. This holds true for old states as

¹⁶⁴ David Harris, *Cases and Materials on International Law*, 5th ed. (London: Sweet & Maxwell 1998):104.

¹⁶⁵ William Kirby, "When did China Become Chinese?" in Joshua Fogel (ed.), *The Teleology of the Modern Nation-State: Japan and China* (Philadelphia: University of Pennsylvania Press, 2005):105-114 (110).

¹⁶⁶ Jorri Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood* (Cambridge: Cambridge University Press, 1996):88 fn. 421.

¹⁶⁷ See the UN Security Council condemnation of the proclamation of the TRNC and called for its non-recognition of the TRNC, Resolutions 541 (1983) of 18 November 1983 and 550 (1984) of 11 May 1984, at www.unficyp.org/nqcontent.cfm?a_id=1636.

¹⁶⁸ David Hannay, *Cyprus: The Search For A Solution* 1 (London: I.B. Tauris, 2005):8; Christian Tomuschat, "The Accession of Cyprus to the European Union," in: Peter Häberle, et al. (eds.), *Festschrift für Dimitrios Tsatsos*, (Baden-Baden: Nomos, 2003):672-689 (672, 676).

¹⁶⁹ "DNI McConnell: Karzai Government Controls Only 30% of Afghanistan," *Frontrunner*, Feb. 28, 2008 (chief of US intelligence's estimate).

¹⁷⁰ 170."Statement of his Holiness the Dalai Lama," Aug. 7, 2001, WTN, Aug. 8, 2001, http://www.tibet.ca/wtnnarchive/2001/8/8_1.html.

¹⁷¹ Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unending War* (London: I.B. Tauris, 1996):89

well as new ones.”¹⁷² The Lhasa government administered part of the Tibet Plateau, but under international law it was only a local government that lacked the legal title needed to be a government for statehood purposes. China’s central government was the titleholder, as states and the UN recognized. As soon as China was again able to exercise authority in the territory, most political and religious elites associated with the Lhasa administration assented to a 17-Point Agreement between it and the China’s central government that stated that Tibet is part of China.¹⁷³ They deemed the agreement’s pledge to maintain the local administration and Tibet’s religion and culture more important than Tibet being regarded as a state.¹⁷⁴ China largely abided by the terms of that agreement within the territory ruled by Lhasa government officials, until the latter chose to back an uprising and become émigrés.¹⁷⁵

D. A Capacity to Enter into Foreign Relations

To be a state, a territory needs legal competence to act fully on the international plane. As Shaw puts it, “It is essential for a sovereign state to be able to create such legal relations with other units as it sees fit. Where this is not present, the entity cannot be an independent state.”¹⁷⁶ Alaska acts internationally as to economic and cultural matters, but lacks competence to be a national state, because it cannot make political or military agreements with foreign sovereigns. The US Constitution forbids it¹⁷⁷ and Alaska is not recognized by the world’s countries as one of their own. Even if the Alaska Independence Party that ex-Governor Sarah Palin lauded¹⁷⁸ were to take power and argue Alaska is a separate country because it has a population, territory, government and agreements with Russia and Canada, no state or the UN would recognize it, because the US claims all of Alaska’s territory and insists that only Washington can have political relations with foreign sovereigns on Alaska’s behalf.

Under international law, a territory has state sovereignty only if it “has over it no authority other than that of international law.”¹⁷⁹ A state must have a legal identity distinct from any other state’s identity and subordinate only to international law. This

¹⁷² Oyvind Osterud, “The Narrow Gate: Entry into the Club of Sovereign States,” *Review of International Studies* 23 (1997): 167-184.

¹⁷³ That agreement was not unique; there were agreements on “peaceful liberation” in other parts of the country, the most famous of which was the January, 1949 agreement on the peaceful liberation of Beijing, which specified lenient treatment of Guomindang armed forces in Beijing, whose commander, Fu Zuoyi, who was allowed to keep his political position. Freedom of the press and religious freedom in Beijing were also supposed to be guaranteed. Dai Qing, “1948: How Peaceful was the Liberation of Beijing?” *China Heritage Quarterly* no. 14 (June 2008), http://www.chinaheritagequarterly.org/features.php?searchterm=014_daiqing.inc&issue=014.

¹⁷⁴ Shakya, *Dragon*:83, 89-90. Interviews with two of the Dalai Lama’s negotiators and their interpreter indicated no physical coercion of negotiators (treaties are void for duress only if it is personally applied to negotiators), no prohibition on suggesting amendments to the central government draft (amendments were made), and no forging of Tibetan government seals (only personal seals were made, at negotiators’ request). Melvyn Goldstein, *A History of Modern Tibet, Volume 2: the Calm Before the Storm, 1951-1955* (Berkeley: University of California, 2007):96, 101-102, 106-107, 471.

¹⁷⁵ Shakya, *Dragon*:206.

¹⁷⁶ Shaw, *International*, 4th ed.:142.

¹⁷⁷ US Constitution Art. 1, Sec. 10. US states can enter into treaties that do not involve political or security matters. *Virginia v. Tennessee*, 148 US 503, 518 (1893).

¹⁷⁸ Rosa Brooks, “Palin’s Secession Flirtation,” *Los Angeles Times*, Sept. 4, 2008.

¹⁷⁹ *Austro-German Customs Union Case*, P.C.I.J., Ser. a/B, No. 41, 1931: 47 (per Anzilotti, J.)

legal capacity depends on the territory being separate for the purposes of its foreign relations, “so that no other entity carries out and accepts responsibility for them.”¹⁸⁰

The world’s states and the UN generally create or affirm a territory’s statehood by recognizing it as a fellow state. In the former Yugoslavia, attacks on Slovenia and Croatia were not deemed acts of international aggression and their representatives were not allowed to address the UN until these territories were recognized.¹⁸¹ If major states and the UN refuse to recognize a territory as a state, it will lack the capacity to enter into significant foreign relations and its acts having external or international repercussions will not be validated by the international system.¹⁸²

Norbu claims Tibet had a mutual recognition treaty with Mongolia in 1913 and the Simla treaty of 1914 with Britain, but Tibet was not recognized by any established state in the modern era, the era that matters to the modern concept of statehood. Mongolia was not a recognized state in 1913. It proclaimed independence in late 1911, when many Chinese provinces and territories were declaring they were separate, because the Qing Dynasty had just collapsed. Mongolia was not recognized until decades later by Russia and China, the two states whose territories surround Mongolia, or by Japan, the power most interested in prying Mongolia loose from Russian and Chinese influence. The Soviet Union and ROC recognized Mongolia only in 1946 and the latter withdrew its recognition in 1953. It did not recognize Mongolia again until 2002.¹⁸³ Japan recognized Mongolia in 1972,¹⁸⁴ the US did so only in 1987.¹⁸⁵

The 13th Dalai Lama told Charles Bell, Tibetologist and British Political Officer for Tibet, that he never empowered his negotiator, the Russian agent Aghvan Dorjiev, to conclude a “treaty” (Bell’s quotations marks) with Mongolia; “nor does it appear that the Lama or his Government ever ratified the document.”¹⁸⁶ The treaty was apparently inspired and executed with Russian interests at the fore;¹⁸⁷ yet, whether that is so is not the main point, because Tibet and Mongolia were not recognized as states. Thus, for them to recognize each other had no more significance than the present-day mutual recognition by South Ossetia and Abkhazia, territories in turn only recognized by Russia and Nicaragua,¹⁸⁸ or the contemplated recognition of Kosovo by the TRNC, a territory only recognized by Turkey.¹⁸⁹ No one would claim that mutual recognitions make South Ossetia, Abkhazia, the TRNC, or Kosovo states under international law.

¹⁸⁰ Crawford, *The Creation*:51-52.

¹⁸¹ Marc Weller, “The International Response to the Dissolution of the Social Federal Republic of Yugoslavia,” *AJIL* 86 (1992):569-607.

¹⁸² Thomas Grant, *The Recognition*:Ch. 3.

¹⁸³ Robert Bedeski, *Mongolian Futures: Scenarios for a Landlocked State* (Stockholm: Institute for Security and Development Policy, 2008):36; Robert Green, “Onward to Mongolia,” *Taiwan Review*, Jan. 1, 2003; “Mongolian Political History in the 20th Century,” *Expedition* 46:3 (2002):9.

¹⁸⁴ Tsedendambyn Batbayar, “Mongolia and Japan in the First Half of the 20th Century,”

<http://www.geocities.com/mongolsec/monjap.html>.

¹⁸⁵ Kerry Dumbaugh, *Mongolia and US Policy* (Washington: Congressional Research Service, 2007):8.

¹⁸⁶ Sir Charles Bell, *Tibet Past and Present* (Delhi: Book Faith India, 1998):135.

¹⁸⁷ Mehra *The Mongol*.

¹⁸⁸ “Hearing of the United States Commission on Cooperation and Security in Europe,” *Federal News Service*, Sept. 16, 2008.

¹⁸⁹ “Kosovo Recognized by Northern Cyprus: ‘No People can be Forced to Live under the Rule of Another,’” *Tiraspol Times* (Moldova), Feb. 18, 2008. The TRNC did not recognize Kosovo, but only congratulated its leaders on their attainment of “independence” and said it is contemplating recognizing Kosovo. “Ercakica on the Recognition of Kosovo,” *Anatolia News Agency*, Feb. 19, 2008.

The Lhasa government was thus not recognized as a state by an independent Mongolia, one of two major instances of supposed recognition Norbu cites. As will be shown, neither did Britain recognize it through the Simla Agreement. Tibet in fact wholly lacked the capacity for relations with states, as an incident in 1943 illustrates. When US airmen bailed out of a cargo plane over Tibet, the ROC representative in Lhasa pre-empted the local government's move to receive and care for them. The Lhasa government claimed neutrality in World War II, but did not protest the overflight by a belligerent state aircraft, but instead protested that the aircraft had positioned itself higher than the Dalai Lama. For its part, the US was so unwilling to publicly acknowledge voluntary dealings with Lhasa over the airmen (through Britain's representative), that it lied that Tibetans had shot down the aircraft.¹⁹⁰

VII. The Ruse of "Suzerainty"

Seeking influence in Tibet to secure British India against Russian advances, Britain in the early 20th Century sought to create ambiguity over Tibet's status by declaring Tibet's relationship with China one of "suzerainty." It first did so soon after Britain's 1903-1904 invasion of Tibet. At the Simla conference, a decade later, "His Majesty's Government were [*sic*] prepared to recognize Chinese suzerainty over an autonomous Tibet."¹⁹¹ China's representative, Chen Yifan, initialed an early Simla draft agreement (April 27, 1914), but was ordered by his government to not sign the final draft (July 3, 1914). Instead, Chen declared that Tibet is "an integral part of the territory of China."¹⁹² The agreement was never ratified by China, and thus was not binding on her.¹⁹³ China regarded the Simla agreement as not a treaty at all or at most an unequal treaty, by which Britain sought to imply that China was not fully sovereign in Tibet.¹⁹⁴ Indeed, to force China to send a representative to Simla and to accede to suzerainty, rather than sovereignty, Britain had threatened to withhold needed financial assistance and perhaps even deny British recognition of the ROC.¹⁹⁵

At Simla, Britain also sought territory at China's expense by imposing a line fixed at the Himalayan crest as the Tibet/India boundary. The Lhasa government representative at Simla secretly agreed, in an exchange of notes, to this "borderline" drawn by Sir Henry McMahon, a British colonial official in charge of India's foreign affairs. The McMahon Line was a typical colonialist-imposed frontier, heedless of

¹⁹⁰ Richard Starks and Miriam Murcutt, *Lost in Tibet: the Untold Story of Five American Airmen, a Doomed Plan, and the Will to Survive* (Guilford, Conn.: Lyons Press, 2004).

¹⁹¹ "Tibet (Chinese Suzerainty)," House of Commons, Nov. 28, 1949 (statement of UK Secretary of State for Foreign Affairs Mayhew), <http://hansard.millbanksystems.com/commons/1949/nov/28/tibet-chinese-suzerainty>.

¹⁹² Michael van Walt van Praag, *The Status of Tibet* (Boulder: Westview, 1987):55.

¹⁹³ Alastair Lamb, *The McMahon Line: a Study in the Relations between India, China and Tibet, 1904 to 1914*, 2 v. (London: Routledge, 1966):638-639; Carole McGranahan, "Empire and the Status of Tibet: British, Chinese and Tibetan Negotiations, 1913-1934," in McKay, *A History*:267-295 (274).

¹⁹⁴ On the concept and practice of unequal treaties, see Byron Tzou, *China and International Law: the Boundary Disputes* (New York: Praeger, 1990):Ch. 5; Dong Wang, *China's Unequal Treaties: Narrating National History* (New York: Lexington Books, 2005).

¹⁹⁵ Parshotam Mehra, *The McMahon Line and After: A Study of the Triangular Contest on India's North-eastern Frontier Between Britain, China and Tibet, 1904-1947* (London: Faber & Faber, 1974):103-170; Joseph Esherick, "How the Qing Became China," in J. Esherick, et al. (eds.) *Empire to Nation: Historical Perspectives on the Making of the Modern World* (New York: Rowman & Littlefield, 2006):251.

the affiliations of local people, who included those with religious and tax connections to the Lhasa government, but were forced into British India. The agreement's existence was not revealed to the Chinese representative and the demarcation line was not broached at Simla.¹⁹⁶ The British India government omitted any public reference to the McMahon Line until 1939¹⁹⁷ and, without consulting any other government, proclaimed it the border in 1943.¹⁹⁸ The Lhasa government repudiated it in 1947 by writing to the Indian government to demand return of large areas south of the Line.¹⁹⁹ Recently, however, the Dalai Lama has recognized the McMahon Line as the international boundary and all land south of it as the territory of his patron, India.²⁰⁰

The term "suzerainty," used in the Simla agreement, was borrowed from the relationships among medieval European rulers and is incompatible with modern conceptions of statehood. In the words of a leading British legal scholar W.E. Hall, writing some years before the Simla conference,

States under the suzerainty of others are portions of the latter, which during a process of gradual disruption or by the grace of the sovereign have acquired certain of the powers of an independent community, such as that of making commercial conventions or of conferring their exequatur on foreign consuls. Their position differs from that of . . . protectorates, etc., in that a presumption exists against the possession by them of any given international capacity.²⁰¹

In his late 19th Century way, Hall said that a suzerainty is a part of the "suzerain" or dominant state and has some autonomous powers, but cannot run its own foreign affairs. Writers unfamiliar with the legal usage of "suzerainty" equate it with "de facto independence,"²⁰² but if suzerainties are "portions" of their suzerains, they have no independence, including no "de facto independence." In fact, in November, 1950, the Indian government told the Chinese government that the phrase "autonomy within the framework of sovereignty," used in an aide memoire India sent China about India's view of China's position in Tibet, meant the same as "suzerainty."²⁰³ Prominent historians of Tibet have concluded that, at the latest, the region became part of China under the Qing. For example, the famed Czech Tibetologist Josef Kolmas wrote that during the Qing, "developments took place on the basis of which Tibet came to be

¹⁹⁶ Alastair Lamb, *The China-India Border: Origins of the Disputed Boundaries* (Oxford: Oxford University Press, 1964):142-145.

¹⁹⁷ Lin Hsiao-ting, "Boundary, Sovereignty and Imagination: Reconsidering the Frontier Disputes between British India and Republican China, 1913-1947," *Journal of Imperial and Commonwealth History* 32:3 (2004):25-47 (33).

¹⁹⁸ Steven Hoffmann, "Rethinking the Linkage Between Tibet and the China-India Border Conflict: a Realist Approach," *JCWS* 8:3 (2006):165-194 (173).

¹⁹⁹ Lamb, *The McMahon*:580. The British also tried to claim the Tibetan territory in Tawang, south of the McMahon Line. The Indian government finally took it over in February, 1951, ignoring protests by the Lhasa government. Id.; Tzou China:26. In 2008, the Dalai Lama stated that Tawang is part of India. "Tawang Part of India: Dalai Lama," *Times of India*, June 4, 2008.

²⁰⁰ "The Dalai Lama's Representative . . . [Interview with Tashi Wangdi], Wikinews, Nov. 14, 2007 http://en.wikinews.org/wiki/Dalai_Lama's_representative_talks_about_China,_Tibet,_Shugden_and_the_next_Dalai_Lama.

²⁰¹ William Edward Hall, *International Law*, 4th ed. (Oxford: Clarendon Press, 1895):31.

²⁰² Goldstein, *A History*:822.

²⁰³ See "Dated: November 27, 1950: China and Tibet," *The Hindu*, Nov. 27, 2000.

considered an organic part of China, both practically and theoretically subject to the Chinese central government.”²⁰⁴

Suzerainty was in any case not an appropriate designation for Tibet or any modern world territory in 1914, as by the early 20th Century sovereignty was the basis of statehood and either exists or does not.²⁰⁵ Instead of being an appropriate description of an existing relationship, “suzerainty” was a lever, first for European powers intent on detaching the mainly Christian Balkans from the Ottoman Empire dominated by largely Muslim Turkey. Using the signboard of suzerainty, the powers forced Turkey to create autonomous Balkan principalities only nominally under Turkish authority and “Autonomy proved to be a way station to full sovereignty.” Serbia, for example, became an autonomous principality between 1812 and 1829. At the 1878 Congress of Berlin, the Ottoman Sultan was then forced to give Serbia, Romania and Montenegro independence. In using the concept of suzerainty to remove these lands from the Ottoman Empire, the European powers forced the Ottoman (and Qing) rulers to accept European notions of international law, which required proclamations of sovereignty over territory.²⁰⁶ In April, 1910, the Qing acceded to use of the term and formally proclaimed China’s “sovereignty” (*zhuquan*) in Tibet, after Qing troops entered Lhasa, where they were to remain for the next two years.²⁰⁷

Britain used the idea of suzerainty to gain influence and extra-territorial rights in Tibet, to China’s disadvantage. The head of Britain’s pro-independence Tibet Society has noted that Britain “borrowed the inappropriate doctrine of suzerainty from the effete Turkish sultanate . . .”²⁰⁸ This is not quite accurate, as Britain borrowed it from *former* Turkish practice. By the time Britain used “suzerainty” with regard to Tibet, Turkey had long since abandoned it and adopted “sovereignty,”²⁰⁹ as had China, in practice.²¹⁰ Britain’s use of suzerainty was thus not an “objective” use of a term best-suited to Tibet’s relationship to China’s central government, as some British writers argue.²¹¹ It was instead a device to leverage regional British colonial influence, albeit an unsuccessful gambit, as Britain usually ended up acceding to China’s demands that interactions related to Tibet were to be handled by China’s central government.²¹²

²⁰⁴ Josef Kolmas, *Tibet and Imperial China: A Survey of Sino-Tibetan Relations Up to the End of the Manchu Dynasty in 1912* (Canberra: The Australian National University, Centre of Oriental Studies, Occasional Paper 7, 1967):33.

²⁰⁵ Alan Siaroff, *Comparing Political Regimes: a Thematic Introduction to Comparative Politics* (Petersborough, Ont.: Broadview Press, 2005):13.

²⁰⁶ Richard Horowitz, “International Law and State Transformation in China, Siam and the Ottoman Empire during the Nineteenth Century,” *Journal of World History* 15:4 (2005):445-486.

²⁰⁷ Colin Mackerras, *China in Transformation, 1900-1949*, 2d ed. (Harlow, UK: Longman 2008):23.

²⁰⁸ “Supplementary Memorandum Submitted for the Tibet Society: An Ethical Foreign Policy for Tibet,” United Kingdom Parliament, Hansard Archives (s.d; Nov. 22, 2000?)

www.publication.paliament.uk/pa/cm199900/cmslect/cmfaff/574/574ap15.htm.

²⁰⁹ Mehmet Birdal, “From Imperial Suzerainty to Absolutist Sovereignty: The Ottoman Diplomacy in the 17th Century and the Emergence of the Modern International System,” Paper presented at the Annual Meeting of the International Studies Association, Montreal, Mar. 17, 2004.

²¹⁰ Horowitz, *International Law*:481.

²¹¹ See Robert Barnett, “Did Britain Just Sell China?” NYT, Nov. 25, 2008; Paul Harris, “Is Tibet Entitled to Self-Determination?” (arguing suzerainty “happens to be fairly close to the actual situation of Tibet in relation to China during the last years of the Ching dynasty”), Apr. 26, 2008, <http://webb-site.com/articles/tibetharris.htm>.

²¹² See Palace, *The British . . .*

Although Western legal scholars of the time regarded a suzerainty as part of the territory of the suzerain power, Qing officials and foreign powers did not need to refer to this anachronistic Western concept to deem Tibet part of China, because not only did they consider Tibetans to be imperial subjects (*chenmin*), so too did Tibet's elites.²¹³ The central government accordingly had a system for managing Tibet-related affairs, using the 2^d and 4th of six *fan bu* or border departments of the *Lifan Yuan* or Office of Border Affairs.²¹⁴ That office dealt with two kinds of *fan* or border peoples, *wai fan* and *nei fan*, or outer and inner border peoples. Only the *Lifan Yuan* 6th department dealt with *wai fan* and only with regard to crimes they committed in China. The countries of *wai fan* were called *shu guo* (dependent countries), a Han Dynasty term, and included Annan, Burma, Korea, Nepal, Philippines, Ryuku Islands, Sikkim, Thailand, etc. Relations with these countries were handled by the *Li Bu* or Ministry of Protocols. *Shu guo* paid periodic, but infrequent tribute to the emperor, who might offer military protection upon request, and were not part of China. The imperial court did not participate in *wai fan* internal affairs and stationed no troops or representatives among them. Some *shu guo*, including what are now Kazakhstan, Myanmar and Sikkim, asked to be included in the Qing's mapping of its empire, but were refused.

Tibet, Qinghai, Xinjiang and Mongolia were treated quite differently from the *shu guo*. These *nei fan* areas had to provide periodic, frequent tribute,²¹⁵ host imperial troops and border patrols, and have their ministers' appointments ratified and their politics supervised by the central government. The *Lifan Yuan nei fan* departments appointed officials, administered Tibetan and Mongolian "lama affairs," defined borders, ran a postal system, presided over meetings and ceremonies, supervised trade in *nei fan* areas, and dealt with "nomad affairs." *Nei fan* areas were not deemed "colonies" and, contrary to attempts to project the colonialism of Westerners onto Chinese, the *Lifan Yuan* was not a "colonial office."²¹⁶ *Shu guo* were tributary foreign countries, with their own sovereigns. For example, Prince Gong Yixin, the Qing's mid-late 19th Century de-facto foreign minister described Korea as a tributary state whose land did not belong to China.²¹⁷ *Nei fan* areas were in effect territories, but not provinces, of the Chinese empire, with varying levels of autonomy, depending on the territory in question and the central government's strength at a given time. Although

²¹³ Wolfram Eberhard, *A History of China* (London: Routledge, 2005):350. Subject status does not imply subjection: Canadians were British subjects until 1977, when they became Commonwealth citizens under the Citizenship Act of 1977. "Commonwealth of Nations," http://www.latifm.com/look/Commonwealth_of_Nations.htm.

²¹⁴ After 1861, the *Lifan Yuan*'s name was changed to the *Zongli Yamen*.

²¹⁵ The tribute system (*chao gong ti xi*) was mainly a system to regulate trade, with only tributaries allowed to trade, and a system of international relations designed to maintain the so-called "Pax Sinica." See He Fangchuan, "Huayi jixu lun" (A study of the Pax Sinica), *Beijing Daxue Xuebao* no. 6 (1998):32-37. Tributaries paid tribute [*gong*] to the emperors; the emperors gave gifts to tributaries. The emperor's gifts were mainly re-saleable use items, but tribute often consisted of exotica. Kenneth Pomeranz and Topik, *The World that Trade Created: Society, Culture and the World Economy, 1400-Present* (Armonk: ME Sharpe, 1999):12-13. The emperor's gifts given were usually of greater value than the tribute received. Suzuki Shogo, "The Agency of Subordinate Polities: Western hegemony in the East Asian Mirror," in John Hobson and Leonard Seabrooke (eds.), *The Everyday Politics of the World Economy* (Cambridge: Cambridge University Press, 2007):181-182.

²¹⁶ Esherick, How:253-254, fn. 11 ("the Chinese term *fan* does not imply colonies . . . but rather frontier dependencies or subordinated polities in a feudal system)." For an example of such mistranslation, see James Frazer, *The Golden Bough: a Study of Religion and Magic* (London: Currier Dover, 2002 [1890]):103.

²¹⁷ See Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (London: Routledge, 2009):165-166.

the Qing had a non-modern worldview and structure before the late-19th Century -- when Western states and Japan imposed precepts of “European International Society” on China, including the abolition of tributary relations²¹⁸ -- its distinguishing of *nei fan* and *wai fan* peoples was not radically different from those that the present-day Chinese government maintains in terms of the respective duties of its State Ethnic Affairs Commission (*Guojia Minwei*) and Ministry of Foreign Affairs (*Waijiao Bu*).

In Tibet from 1644, early Qing officials ruled indirectly, but by 1661 were able to select the Dalai and Panchen Lamas, while the former came to use the *Lifan Yuan* as his “bureaucratic organ . . . in his role as spiritual leader and temporal adjudicator of select affairs [in] eastern Mongolia and Qinghai.”²¹⁹ The Qing carried out Tibetan affairs in a context of power struggles among local elites and their Mongol patrons. In 1705, regent Sangye Gyatso, who had concealed the 5th Dalai Lama’s death for 14 years and allied himself with the Qing’s enemies, the Zunghar Mongols, was killed by Labszang Khan, a Khoshud Mongol who the Kangxi Emperor had appointed Tibet’s secular king. In 1717, Zunghar Mongols invaded Tibet and killed Labszang Khan.²²⁰

The Emperor sent Manchu, Mongol and Han troops to Lhasa in 1718 to back Tibetan noble allies of Labszang Khan. The army was defeated and the Zunghars then plundered Lhasa and its monasteries. Another Qing and Mongol vassal army returned in 1720, drove out the Zunghars, occupied Lhasa (whose population welcomed it), and installed the 7th Dalai Lama and a Tibetan secular government under the aristocrat Kanchenas. To create internal stability, the Qing implemented joint rule by local nobles and high lamas serving as ministers (*kalon*) of a cabinet (*Kashag*). Qing direct rule had begun and it included the incorporation of most of Amdo and Kham into existing provinces in 1724. After Tibetan secular elites fighting a civil war again called in Qing forces in 1728, foreign and military affairs came within the ambit of the *amban* or imperial resident who, with local authorities, were to manage economic and trade policies and religious/legal matters.²²¹ In 1750, the Qing sent an army again, after followers of Tibet’s last secular ruler Gyurmey Namgyal murdered the *amban*. The Qing ordered abolition of hereditary rule by the secular aristocracy, elevated the Dalai Lama’s powers above those of the *kalon*, greatly increased the power of the *amban*, and ordered the Qing garrison in Lhasa to have a minimum of 1,500 men.²²²

In 1793, after Qing troops twice (1788 and 1791) drove plundering Nepalese Gurkha invaders out of Tibet, the *amban* presented the 8th Dalai Lama with a 29-Point Edict that gave the central government the right to identify the Dalai and Panchen lamas and examine their incomes and expenses, administer immigration affairs, supervise Tibet’s coinage, and appoint military officers and pay soldiers in Tibet. The

²¹⁸ Ibid:140-176

²¹⁹ Pamela Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 2001):329.

²²⁰ Luciano Petech, *China and Tibet in the Early Eighteenth Century: History of the Establishment of a Chinese Protectorate in Tibet* (Leiden: 1972):32-65.

²²¹ Peter Perdue, *China Marches West: the Qing Conquest of Central Eurasia* (Cambridge: Harvard University Press, 2005): 235-236, 249, 311-312; Sabine Dabringhaus, “Chinese Emperors and Tibetan Monks: Religion as the Instrument of Rule,” in S. Dabringhaus and Roderich Ptak, *China and Her Neighbours: Borders, Visions of the Other, Foreign Policy 10th to 19th Century* (Wiesbaden: Harrassowitz Verlag, 1997):119-134 (127).

²²² Tsepon W.D. Shakabpa, *Tibet: A Political History* (New Haven: Yale University Press, 1967):140-152.

amban was to have the same rights as the Dalai Lama in administering Tibet; all Tibetans, including monks, were to comply with his orders. The *amban* was to appoint Tibetan regional officials, be responsible for diplomacy, fix borders, impose taxes, regulate corvee, and punish criminals. The Qing introduced a ranking system for monks, parallel to that of secular officials, with 175 members each. The Dalai and Panchen Lamas were ordered to appear at the Qing court by making richly-rewarding “tribute journeys” (*jingong*). The *amban* had to be present at all important religious events, including consecrations of reincarnated lamas (*tulku*), and the Qing ordered monks and pilgrims throughout Tibet to share in the costs of such events, rather than having them paid for solely by the Lhasa government. All monks had to submit a certificate to the *amban* and needed official permission to leave their monasteries. Monastic finances were subordinated to imperial control. All relatives of *tulku* were excluded from the Lhasa government and *tulku* were no longer to be discovered among the aristocracy. The choice of new Dalai and Panchen Lamas by lot was ordered, to prevent oracles from recognizing these reincarnations from among the Dalai and Panchen Lamas’ relatives. Because monks were effectively privileged over aristocrats, the monasteries were loyal to the Qing and sided with it against the Zunghars and other enemies and rivals of the dynasty.²²³

This system went well beyond the concept of suzerainty in the level of central government participation in local affairs.²²⁴ Under it, “the *amban* assumed all the functions of executive government [although] the Qing dynasty still wanted to use the charisma of the Dalai Lama in order to add a gloss of legitimacy to its position of actual overlordship in Tibet.”²²⁵ British officials were aware of this history and knew that relations between the Qing and Lhasa administration were interrupted mainly because of weakness in the Chinese central government that Britain itself had fostered. It was not until in 2008, however, that the UK definitively abandoned the concept of suzerainty in relation to Tibet. The UK Foreign Secretary then recognized it as an “anachronism.” The last British governor of Hong Kong and present chancellor of Oxford University, Chris Patten, called it a “quaint eccentricity.”²²⁶ Dibyesh Anand, a UK Tibet specialist, dubbed it a “calculated strategic hypocrisy.”²²⁷ Britain’s position now is that “Tibet is part of China. Full stop,” as a UK official put it.²²⁸

Even when it used the term suzerainty, however, Britain recognized that only China had the right to conduct foreign affairs involving Tibet, because if suzerainty

²²³ Dabringhaus, *Chinese Emperors*:127-132.

²²⁴ Besides the sources cited therein, the preceding six paragraphs are based on Pingsog Targye, “Cong Qing chao qianqi zhongyang zhengfu cuoshi dui Xizang difang de shizheng shi kan zhu Zang dachen de shezhi” (Measures taken by the central government in the management of government policies toward Tibet during the early Qing Dynasty: examining the establishment of the Tibet resident minister), *Xizang Daxue Xuebao* 22:1 (2007):46-49; Zhang Yun, “Jiu/Sheng Guanxi, Gong/Ci Guanxi, Zong/Fan Guanxi Ji Gong/Shi Guanxi: Lidai Zhongyuan Wangchao yu Xizang Difang Guanxide Xingtai yu Shizhi” (On the Relationship of Uncle/Nephew, Tributary/Reciprocal Gift Giver, Suzerain/Border People and Patron/Client: Forms and Substance of Historical Relations between the Central Empire and Tibetan Localities), *Zhongguo Bianjiang Shidi Yanjiu* 17:1 (2007):6-17; Li Xin, “Qing mou yingguo suote Zhongguo dui Xizang miushuo “zongzhuquan” zhi qi yuan qi shizhi” (Nascence and Essence of what Britain, in the Late Qing, Falsely said was China’s Suzerainty over Tibet), *Yangzhou Daxue Xuebao* 10:1 (2006):81-84.

²²⁵ Dabringhaus, *Chinese Emperors*:124.

²²⁶ Richard Spencer, “UK Recognizes China’s Direct Rule over Tibet,” *Telegraph*, Nov. 5, 2008.

²²⁷ Dibyesh Anand, “Tibet, China and the West: Empires of the Mind,” *Open Democracy*, Apr. 1, 2008.

²²⁸ “Britain Gives in to China over Tibet,” *Economist*, Nov. 8, 2008.

had any firm characteristic, it was that the suzerain controlled the principle foreign affairs of the suzerainty. Hence, the British did not initially negotiate at Simla with the Dalai Lama's representative alone, but with China's representative. Only Britain and China could form a valid treaty, not Britain and Tibetan local authorities, whose conference participation did not imply recognition of Tibet as a state by Britain or China. Recognition is not implied where a non-recognized territory is admitted to an international conference, when there is no manifest intent to recognize it as a state.²²⁹

Nor did Britain's entry into an agreement with the Lhasa government mean that Britain recognized Tibet as an independent state. Britain stated its intention to regard Tibet as a suzerainty *of China* and, as the renowned international law specialist Hersh Lauterpacht wrote, "to imply recognition from conduct is particularly inappropriate when the general attitude of the state in question points to its continued determination to deny recognition."²³⁰ In fact, the government of British India eventually refused to acknowledge as lawful the agreement London made at Simla, on the grounds that it violated the Anglo-Russian Agreement of 1907, which stated that Britain and Russia would make arrangements affecting Tibet solely through the Chinese government.²³¹

Even if the Tibet/Mongolia mutual acknowledgement and the Simla document were treaties, the fact that Tibet, as an "independent state," only made two treaties during its 38 years of supposed "sovereignty" indicates that the Lhasa authorities lacked the capacity to have foreign relations, because Tibet was not independent and the states of the time knew it. A US international law scholar who studied Tibet's "declarations of independence" found they were not political-legal declarations at all, but merely the 13th Dalai Lama's affirmations that the *mchod-yon* (priest-patron) relationship between Dalai Lamas and Chinese emperors had been extinguished due to the end of the empire.²³² A leading Indian scholar of modern Tibet has also noted that proclamations like the one the Tibetan National Assembly (*Tshong du*) made to the Indian Governor-General in November, 1912 "lacked some of the essential desiderata of a formal proclamation of independence and would be hard to accept as such."²³³ In contrast, when the Second Continental Congress was preparing for US independence in 1776, it resolved that Crown authority "should be totally suppressed," that the new states "are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved", and that efforts should be made to form foreign alliances.²³⁴

The Lhasa regime's aristocrats and theocrats had until the 20th Century not shunned imperial gifts and protection, and even as late as 1908, the 13th Dalai Lama sought a

²²⁹ Lee Tzu-wen, "The International Legal Status of the Republic of China on Taiwan," *UCLA Journal of International and Foreign Affairs* (1996-1997):351-374 (fn.41).

²³⁰ Lauterpacht, Recognition:371

²³¹ Lin, Boundary, 31 and fn. 19.

²³² Alfred P. Rubin, "Tibet's Declarations of Independence," *AJIL* 60 (1966):812-814 and Rubin, "A Matter of Fact," *AJIL* 60 (1966):586.

²³³ Mehra, *The Mongol* -:6. That such declarations were ambiguous may play a role in continuing proclamations of "declarations of independence" by contemporary Tibetan exiles. See, e.g., "Nations of High Asia Declare Independence in US Congress" (2006), <http://www.tibetanyouthcongress.com/highasia.htm>.

²³⁴ Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf, 1997):37, 41; Jonathan Elliot, *The Debates on the Adoption of the Federal Constitution* Vol. 1 (New York: Burt Franklin Reprints, 2d ed. 1974) (1836):55.

connection with the Qing through his trip to Beijing.²³⁵ Tibetan elites may not have relished integration into a secular Chinese republic that could diminish their power,²³⁶ yet despite the republic's weakness, they still hedged about juridical independence. After some years of tying Tibet's "de facto independence" to British backing, the 13th Dalai Lama began to express a willingness to have at least loose ties to the ROC. In 1930, he replied to ROC leader Chiang Kai-shek's queries by indicating "Tibet was willing to compromise on the issue of independence and accept some sort of nominal subordination to China, so long as it was actually autonomous."²³⁷ The 9th Panchen Lama, who stayed away from his western Tibet base from 1924 until his death in 1937, due to a dispute with the Dalai Lama, acknowledged outright that Tibet was part of China.²³⁸ Lhasa government representatives, seeking to raise border questions with the Kuomintang regime, allowed themselves to be elected to a committee and to the Presidium of China's National Assembly in 1946.²³⁹ This is not say that the ROC government exercised control over Lhasa government territory, but that top Tibetan elites did not necessarily think in terms of Tibet's "complete independence."

The CIA-backed Cold Warriors of the International Commission of Jurists moreover stated in a 1959 report that "It does not appear that before 1942 Tibet actively and formally asserted itself to be independent . . . of the Chinese polity." The year 1942 is cited because that was the year in which the Lhasa administration established a "Foreign Bureau" and demanded that the Lhasa office of the Chinese central government's Mongolian and Tibetan Affairs Commission contact Lhasa officials only through it and not through the *Kashag*. Chiang Kai-shek, responded by sending troops to the border between Qinghai province and Tibet and calling in the Lhasa government representative in China's war-time capital of Chongqing to denounce the move and to refuse a mediation offer from the British government.²⁴⁰ The ROC government thus rejected any notion that the Lhasa administration had the capacity to enter into political relations with any state other than the Chinese state, and this view was to be honored by all the world's states, even those that became antagonistic toward the new PRC regime that took national power in 1949.

VIII. The Historical Connection

Claims of historical rights are often used to argue for maintaining the present state of affairs regarding a territory or to support a demand for restoration of a past state of affairs.²⁴¹ No fixed level of historical ties is needed for a state to legitimately exercise

²³⁵ Goldstein, *A History*:49-50. See also Esherick, *How*:241.

²³⁶ See Esherick, *How*:246 ("The secular modernists of the new republic were overtly hostile to the powerful Lamaist clergy in Mongolia and Tibet").

²³⁷ Goldstein, *A History*:213.

²³⁸ See "The [Tenth] Panchen Lama's Last Speech: Full Text," extract from Tibet Information Network, 20 Feb. 1991, <http://www.columbia.edu/itc/ealac/barnett/pdfs/link5-Panchenspeech.pdf> (10th Panchen Lama states that his predecessor, during a 15-year stay in inland China had "proclaim[ed] that Tibet is an inalienable part of China"). See also Parshotam Mehra, *Tibetan Polity, 1904-1937: the Conflict Between the 13th Dalai Lama and the 9th Panchen: a Case Study* (Wiesbaden: O. Harrassowitz, 1976).

²³⁹ Goldstein, *A History*:555-558.

²⁴⁰ International Commission of Jurists, *The Question of Tibet and the Rule of Law* (Geneva: ICJ, 1959):89.

²⁴¹ Chaim Gans, "Historical Rights: the Evaluation of Nationalist Claims to Sovereignty," *Political Theory* 29:1 (2001): 58-79 (68-69)

sovereignty over a territory, but “there is a minimal level beneath which we would not consider an historical connection to be significant”; e.g., the lack of any historical tie that might have given Jews the right to colonize Uganda, a possibility considered by early Zionist leaders.²⁴² The absence of historical ties has been a factor influencing states and the UN to regard territories as colonies entitled to self-determination.²⁴³ All territories the UN has deemed colonies have not been contiguous with their colonizing states, as contiguity enables states to have historical ties with neighboring territory, while lack of contiguity makes it is unlikely that such ties would have developed.²⁴⁴

The answer from international law to the query of how much of an historical tie a state needs to legitimately exercise sovereignty over territory is thus: not nil, but not much. If a tie of territorial sovereignty was set, even by force, before the UN Charter (1945) banned acquiring territory in that way,²⁴⁵ and the tie was not demonstrably colonial under international law,²⁴⁶ then a state’s present exercise of sovereignty is generally legitimate. It cannot be otherwise: states such as Canada, the US, India, Russia, the UK, France, and Australia were constructed by force and use of treaties made under duress, with contiguous territories added to the state’s core and eventually treated as legal equivalents of pre-existing state territory,²⁴⁷ a process regarded as legitimate even where only short and vague ties to the added territory existed.

Concomitantly, claims that territories, including those acquired by conquest, have to independence can be displaced by acquisitive and extinctive prescription, in which a state’s continued authority over a territory gives it dominion under international law.²⁴⁸ For example, Israel added to its territory by 21% in 1948-1949 during a war

²⁴² Tamar Meisels, *Territorial Rights* (Berlin: Springer, 2005):40. Jewish colonization of Uganda was in fact the idea of British Foreign Minister Joseph Chamberlain. Zionist leader Theodore Herzl did not speak of any ties of Jews to Uganda, because there were none and proposed Uganda as a temporary refuge for persecuted Jews, who would later move to Palestine, or as a place to absorb Jewish emigrants who could not be accommodated in the Jewish state in Palestine. See David Vital, *Zionism: the Formative Years* (Oxford: Oxford University Press, 1982):267-347.

²⁴³ Leon Estrad “International Law and Dependent Territories: the Case of Micronesia,” *Temple University Law Quarterly* (1976): 58- (60).

²⁴⁴ Hurst Hannum, “Rethinking Self-Determination,” *Virginia Journal of International Law* 34 (1993):1-68 (32) (“Only in situations where a European power dominated a non-contiguous territory, in which a majority of the population was indigenous or non-metropolitan, has a territory been considered to have an absolute right of self-determination”).

²⁴⁵ Although some states began after World War I to oppose conquests carried out by others states, they did not renounce the right of conquest until World War II. See Sharon Korman, *The Right of Conquest: the Acquisition of Territory by Force in International Law* (Oxford: Clarendon Press, 1996):159. At a time when Qing authority had already been in place in Tibet for more than a century, the US Supreme Court stated in *Johnson and Graham’s Lessee v. McIntosh*, 8 Wheat. 543, 587-588 (1823), that “conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinion of the individuals respecting the original justice of the claim” The US and UK first formally renounced conquest in the 1941 Atlantic Charter, an agreement of World War II Allies to “seek no aggrandizement, territorial or otherwise” and “desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned.” Llewellyn Woodward, *British Foreign Policy in the Second World War* (London: HMSO, 1976):202-203.

²⁴⁶ On the non-coloniality of Tibet’s relationship to the rest of China, see Barry Sautman, “Colonialism, Genocide and Tibet,” *Asian Ethnicity* 7:3 (2006):243-263.

²⁴⁷ See Thomas Grant, “A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law,” *Virginia Journal of International Law* 40 (1999):115-191 (172).

²⁴⁸ Brierly, *The Law*:167; Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (Manchester: Manchester University Press, 1963):20-22. Lassa Oppenheim, *International Law*, 8th ed. (1955):516 states that prescription in international law is “the acquisition of sovereignty over a territory

with neighboring states and irregular forces that followed Israel's declaration of independence.²⁴⁹ Under a UN partition plan, the annexed territory was designated as part of a prospective Palestinian state and was not regarded as part of Israel's territory by either the UN or any state. Today, however, not the UN, or any major state, or the Palestinian Authority disputes any territory within the "Green Line" created after the war and that now marks Israel's recognized borders. The International Court of Justice has also recognized that all territory within the Green Line belongs to Israel.²⁵⁰ Note that Israel's acquisition of the added territory came in 1948, several years after the UN Charter banned the use of force to settle disputes among states.

Present-day proscriptions of the acquisition of territory by conquest cannot be applied retroactively to negate processes recognized at the time as giving title to territory. A territory's status is based on law in force at the time the status was established. An authority on the acquisition of territory in international law put it that

old titles by conquest must still remain valid. There may or may not be, in particular cases, political reasons why such or such title originating in conquest might now be changed, but this is [different from] the question of title simply. And if old roots of title are to be dug up and examined against the contemporary rather than inter-temporal law, there can be few titles that will escape without question.²⁵¹

Thus, "Under the inter-temporal law, an act sufficient to confer title at the time it was performed will establish title even if the law subsequently changes and the act is no longer sufficient under the new law. The practical effect of this rule is to freeze title as soon as it crystallizes."²⁵² The system under which the sovereignty of China's emperors came to be exercised in Tibet involved their providing protection and status to the Lhasa government. The Dalai Lamas regarded it as legitimate and Tibetans regarded themselves as the emperor's subjects.²⁵³

The European concept of "title" was not part of China's imperial system of ruling territory, which was centered on rule by the "sovereign of the empire" (*jun zhu*) over imperial subjects.²⁵⁴ Sovereignty was not framed using the modern term (*zhuquan*, lit. masterful power) until the very late Qing, but existed as the association of territory with imperial institutions: "all under heaven is the Emperor's and all within the four seas are the emperor's subjects" (*pu tian zhi xia mo fei wang tu shuai tu zhi bing mo*

through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development and conviction that the present condition of things is in conformity with the international order." D. W. Greig, *International Law* (London: Butterworth, 1970):166 interpreted "under the influence of historical development" to mean "there will come a time when there will be created a general conviction, that however wrongful the original taking (like seizure of territory by force) or whatever protests have been made, the present condition of things should not be disturbed." That is how states treated Tibet after the Qing's exercise of authority in Tibet.

²⁴⁹ Kirsten Schulze, *The Arab-Israeli Conflict* (New York: Longman, 1999):15.

²⁵⁰ *Legal Consequences of the Construction by Israel of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 131 (July 9).

²⁵¹ Jennings, *The Acquisition*:53-56.

²⁵² Matthew Ricciardi, "Title to Aouzou Strip: A Legal and Historical Analysis," *Yale Journal of International Law* 17:301, 384 (1992).

²⁵³ Dabringhaus, *Chinese Emperors*:119-134, *infra*.

²⁵⁴ For a discussion of the contrast between European and traditional Chinese notions of sovereignty, see Jeremy Paltiel, *The Empire's New Clothes: Cultural Particularism and Universal Value in China's Quest for Global Status* (New York: Palgrave Macmillan, 2007):Ch. 1.

fei wang chen). “All under heaven” (*tian xia*) was not the whole world, but *jia tian xia* or territories associated with the dynasty -- the *bantu* or territories under imperial administration and subject to its taxation and corvee and the *jiangyu* or territories part of the imperial sphere of influence.²⁵⁵ It certainly included non-Han peoples, such as the Manchu. According to Evelyn Rawski, a US historian of early modern China,

The Qing conceived of themselves as rulers of a pluralistic, multi-national empire. They regarded the peoples inhabiting the strategic Inner Asian peripheries as major participants in the imperial enterprise, imperial subjects on equal footing with Han Chinese.”²⁵⁶

By the Qing dynasty, the official notion was one of a “*Zhongguo*” -- then a common and often officially-used term for China and today the standard term -- that referred to all territories under Qing rule, whose official policy was “Han and non-Han are one family” (*Hua/Yi yijia*).²⁵⁷ The Ming dynasty poet Yang Shen, noting that Yunnan’s ethnic minority peoples, among whom he spent his exile in the 16th Century, were imperial subjects, remarked that as long as ethnic peoples accepted imperial governance, they were Chinese.²⁵⁸

The Qing exercise of sovereignty in Tibet, especially through the *amban* (1727-1911), was not derived from conquest in the conventional sense. It featured several armed interventions but, as even Tibet independence advocates recognize, these were requested by Dalai Lamas.²⁵⁹ A study of the relationship between the Qing and Tibetan monks has concluded that

As under the Yuan, Tibet was subjected to imperial control not primarily by military conquest but through the instrumentalization of religion. In contrast to Mongolian monarchs, the Qing rulers had a clearly defined concept of the borderlines of their empire. Even in remote Tibet, they established a defense system and tried to control the country more strictly than any imperial power before. Moreover, the Qing emperors felt that their support and tutelage of Lamaism justified regarding Tibet as an integral part of their empire.²⁶⁰

The Dalai Lamas desired, rather than found onerous, an imperial power that allowed for degrees of autonomy that varied from place to place and time to time. For old Tibet’s rulers, just as for the present Dalai Lama, there were apparent benefits to

²⁵⁵ Bi Aonan, “Lishi yu jingzhongde wang chao Zhongguo jianyu gainian bianxi” (Differentiating the Concepts of Territory in the Historical Context of Dynastic China) *Zhongguo Bianjiang Shi Di Yanjiu* 16(2)(2006):6-9.

²⁵⁶ Evelyn Rawski, *The Last Emperors: a Social History* (Berkeley: University of California Press, 1998):2.

²⁵⁷ Yang Jianxin, “‘Zhongguo’ yizi he ‘zhongguo’ jianyu xingcheng zai tantao”(The Word “Zhongguo” and a Re-discussion of the Rormation of Chinese Borders and Territories), *Zhongguo bianjiang shi di yanjiu* 16(2)(2006):1-8 (6).

²⁵⁸ Bin Yang, *Between Winds and Clouds: the Making of Yunnan (Second Century BCE to Twentieth Century CE)* (New York: Columbia University Press, 2009):247.

²⁵⁹ “Cao Changching, “Independence: the Tibetan People’s Right,” in Cao Changching and James Seymour (eds.), *Tibet Through Dissident Chinese Eyes: Essays on Self-Determination* (New York: M.E. Sharpe, 1998):3-23 (“Upon the request of the Dalai Lama, the Qing military entered Tibet four times to help settle internal rebellions and to defeat external invasions”).

²⁶⁰ Dabringhaus, *Chinese Emperors*:132.

being part of China²⁶¹ and Tibetans regarded the Qing emperors as Manjusri, the guardian of sentient beings and one of Tibetan Buddhism's key Boddhisattvas.²⁶²

The Qing's long exercise of authority in Tibet, acquiesced in by Tibetan elites and the world's states, extinguished any claim to be made for Tibet independence and was the basis for China's acquisition of title, when modern notions of sovereignty were finally applied. The determination of whether a present-day exercise of sovereignty is legitimate is not based on balancing the number of years a state controlled a territory against the number of years that it did not. Such a method would reverse the recognized sovereignty of many states. For example, Palestine was Arab for some 1,300 years before Israel's now six decades of existence began, yet that existence's legitimacy is now basically accepted even by many Arab leaders.²⁶³

Duration (length of possession) may come into play in mounting an historical claim to territory, but even a short duration and light influence can be sufficient. The US annexed Texas over objections of Mexico, of which Texas was a part only nine years earlier. The US had exercised no sovereignty in the interim Republic of Texas (1836-1845), itself based on a treaty extracted through personal duress against the Mexican commander Santana, who had been defeated in Texas' war for independence. Annexation was not by treaty with the Republic, but by Congressional resolution.²⁶⁴ The only US connection was that many Texans were recent migrants from the US. The US acquisition of Texas was soon widely-recognized however. A valid historical claim moreover can be based on constructive possession at the time of the claim, so that a state that has lost possession of a territory may retain sovereignty over it.²⁶⁵

Historians of Tibet, including those who favor its independence, such as Elliot Sperling, recognize that its relationship with imperial China went well beyond a priest-patron (*mchod-yon*) relationship and that Tibet was not independent, but "politically subordinate," at least during the more than three centuries of the Yuan (1271-1368) and Qing dynasties (1644-1911).²⁶⁶ Sperling states that

The claim that Tibet entertained only personal relations with China at the leadership level is easily rebutted. Administrative records and dynastic histories outline the governing structures of Mongol and Manchu rule. These make it clear that Tibet was subject to rules, laws and decisions made by the Yuan and Qing rulers. Tibet was not independent during these two periods. One of the Tibetan

²⁶¹ "Chinese Soldiers Disguised as Monks Incited Riots: Dalai Lama," IANS, Mar. 29, 2008.

²⁶² David Farquhar, "Emperor as Bodhisattva in the Governance of the Ch'ing Empire," *Harvard Journal of Asiatic Studies* 38:1 (1978):5-34 (6).

²⁶³ Jacob Lassner and S. Ilan Troen, *Jews and Muslims in the Arab World: Haunted by Pasts Real and Imagined* (New York: Rowman & Littlefield, 2007):102.

²⁶⁴ Terry Bilhartz and Alan Elliot, *Currents in American History: a Brief History of the United States* (Armonk: ME Sharpe, 2007):82-83.

²⁶⁵ See Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Dordrecht: Martinus Nijhoff, 1997):31.

²⁶⁶ Eliot Sperling, *The Tibet-China Conflict: History and Polemics* (East-West Center 2004). See also Karen Teltscher, *The High Road to China: George Bogle, the Panchen Lama and the First British Expedition to Tibet* (New York: Farrar, Straus and Giroux, 2006):117. The Dalai Lama in some respects acknowledges Tibet's political subordination during most of the 18th Century. See Thomas Laird, *The Story of Tibet: Conversations with the Dalai Lama* (New York: Grove Press, 2006):226 (speaking of Qing Empire overlordship from 1720 and *amban* exercising greatest authority after 1792).

cabinet ministers summoned to Beijing at the end of the 18th century describes himself unambiguously in his memoirs as a subject of the Manchu emperor.²⁶⁷

Tibetan elites were not alone among frontier peoples in regarding themselves as Qing subjects. A history of Yunnan remarks of its ethnic minorities during the Ming and Qing dynasties that “As the incorporation process went on, local people were seen as imperial subjects not only by imperial governments and Confucian elites, but also by themselves.”²⁶⁸ As for the Tibetan Buddhist Mongol elites: “Throughout the 18th and 19th centuries, the Mongols were stalwart defenders of the Qing state precisely because it had become identified as a multi-ethnic Buddhist enterprise.”²⁶⁹ Even the pro-independence Tibet Justice Center, states that in the 18th Century, the Qing’s

successive interventions . . . did result in an increase in Qing administrative control over Tibetan affairs until in 1792 the Qing temporarily restricted Tibetan autonomy in both domestic and foreign affairs. In the Imperial Edict of 1793, the Ambans, Imperial representatives at Lhasa, were given increased authority, and the Qing asserted a right to control the search for reincarnations of high lamas.²⁷⁰

Henry Bradsher, a US supporter of Tibetan independence, noted that “...even today international legal experts sympathetic to the Dalai Lama’s cause find it difficult to argue that Tibet ever technically established its independence of the Chinese Empire, imperial, or republican.”²⁷¹ Melvyn Goldstein observes that the relationship was perceived that way after the fall of the Qing: “Tibet’s political subordination to China was repeatedly validated by the West throughout the first half of the twentieth century, and particularly in critical years during and immediately following World War II.”²⁷²

As James Crawford notes “independence is the central criterion of statehood.”²⁷³ A territory that the UN and states recognize as a state may come to be viewed as having lost its independence if another state comes to controls the territory and interposes itself between it and the international community, making statehood problematic. That happened with the US occupation of Iraq in 2003. Only in late 2008, when the US stated that many of its troops would withdraw and the US would seek no permanent military bases in Iraq, could “the Iraqi government [begin] a nonstop campaign to convince the world it is a sovereign state.” Questions remained even then whether Iran will play a determinative role in Iraq and some states still refuse diplomatic relations with Iraq.²⁷⁴ Such refusals have not lost Iraq its statehood, but do underscore that a territory unable to display independence finds it hard to be taken as a state.

²⁶⁷ Elliot Sperling, “Don’t Know Much About Tibetan History,” *New York Times*, Apr. 13, 2008. The 6th Panchen Lama, summoned by the Qinglong emperor to the summer capital of Chengde, performed “protecting the nation” (*guo tai min an*; lit. the country is peaceful, the people are safe) ceremonies there in October, 1780. Ruth Dunnell, et al., *New Qing Imperial History: the Making of Inner Asian Empire at Qing Chengde* (London: Routledge, 2004):128, 131.

²⁶⁸ Bin Yang, *Between*:248.

²⁶⁹ Johan Elverskog, *Our Great Qing: the Mongols, Buddhism and Late Imperial China* (University of Hawaii Press, 2006):Introduction.

²⁷⁰ Tibet Justice Center, “The Case Concerning Tibet: Tibet is Rightfully an Independent State,” s.d. <http://www.tibetjustice.org/reports/sovereignty/independent/c/index.html>

²⁷¹ Henry S. Bradsher, “Tibet Struggles to Survive,” *Foreign Affairs*, 47 (1969):75-762 (758).

²⁷² Melvyn Goldstein, *The Snow Lion and the Dragon: China, Tibet and the Dalai Lama* (Berkeley: University of California, 1997):40.

²⁷³ Crawford, *The Creation*:48

²⁷⁴ Alissa Rubin, “Iraq Trying to Assert its Independence,” *IHT*, Apr. 16, 2009.

Because Tibet was not independent, no matter what synonym for a lack of independence (e.g. “political subordination”) is used, Tibet was not a state. Sperling however tries to make out a case that Tibet, while not independent, was nonetheless not part of China, because the Yuan and Qing dynasts were ethnic Mongols and Manchu who headed Mongol and Manchu empires and thus were not Chinese rulers.²⁷⁵ Yet long before they became rulers of multi-ethnic China, the Mongols and Manchu already were Chinese imperial subjects²⁷⁶ and fellow “members of the traditional Chinese periphery.”²⁷⁷ In 1271, Kublai Khan, Genghis Khan’s grandson, declared that he was no longer ruler of the “Great Mongolian state” (*Da Menggu Guo*), but that his *guohao* (dynastic/state name) was *Da Yuan* (the “Great Yuan”) and that he ruled the *Da Yuan Guo* (Great Yuan state). He declared himself the inheritor of the Chinese orthodox tradition, and averred that he ruled *Zhongguo* (China).²⁷⁸ After the Yuan dynasty ended in 1368, Han elites continued to identify with it and not the new Han-led Ming Dynasty. Indeed, “It took two or three generations, some 80 years into the Ming dynasty, before the Chinese began to revise their attitude toward the Mongols and identify with the Ming.”²⁷⁹ If Yuan dynasts saw themselves as legitimate rulers of the Chinese empire and Han elites then and long-thereafter agreed, it is hard to maintain that the Yuan was not a Chinese dynasty.

Before they became China’s rulers, the Manchu too were China’s imperial subjects.

In the Ming dynasty, the tribes in Manchuria maintained close tributary relations with China and accepted the suzerainty of the Ming emperor . . . [T]he Ming government imposed a kind of feudal relation onto the Manchurian tribes by providing them with land and by forcing their leaders to become vassals to the Ming emperor. The latter rewarded the tribal chiefs who have shown unswerving loyalty towards him with titles and Chinese surnames, among other benefits . . . and succession to a chieftainship had to be formally approved by the Ming emperor. This approval was given only when the successor was found to be on friendly terms with the Ming government.²⁸⁰

The name “Manchu” was invented only in 1636,²⁸¹ a few years before this small population, with 250,000 soldiers (*qi ren*; Bannermen) of mixed Jurchen, Mongolian, Han and Korean descent at its core, conquered “China Proper” (*Zhongguo benbu*). The “Manchu” idea represented a people of multi-ethnic origins,²⁸² but even before

²⁷⁵ Kwok, *Historians* . . .

²⁷⁶ Immanuel C.Y. Hsu, *The Rise of Modern China*, 5th ed. (Oxford: Oxford University Press, 1995):20; Franz Michael, *The Origins of Manchu Rule: Frontier and Bureaucracy as Interacting Forces in the Chinese Empire* (New York: Octagon, 1965).

²⁷⁷ Mark Elliot, *The Manchu Way: The Eight Banners and Ethnic Identity in Late Imperial China* (Stanford: Stanford University Press, 2001):357

²⁷⁸ Yang, ‘*Zhongguo*’:7.

²⁷⁹ Lydia Liu, *The Clash of Empires: The Invention of China in Modern World Making* (Cambridge: Harvard University Press, 2004):81

²⁸⁰ Adam Lui, *Two Rulers in One Reign: Dorgon and Shun-chih 1644-1660* (Canberra: Australian National University, 1989):1.

²⁸¹ Charles Hucker, *China’s Imperial Past: an Introduction to Chinese History and Culture* (Stanford: Stanford University Press, 1975):294

²⁸² Bruce Ellerman, *Modern Chinese Warfare, 1795-1989* (London: Routledge, 2001):5; Elliot, *The Manchu*:64

taking power south of the Great Wall, the Manchu founder Nurhaci and his successor Abahai had set up institutions that copied those of the Ming. Dorgon, the regent who ruled with the child Shunzhi Emperor for the first six years after the Qing's founding in 1644, did the same.²⁸³ Qing rulers were explicit that they had the Chinese imperial "Mandate of Heaven" (*Tianming*) and were the "Sons of Heaven" (*Tianzi*).

[The Manchu] continued to worship the Ming emperors throughout the 268-year duration of the Qing dynasty . . . Because the Mandate of Heaven was centered on the principle of legitimacy – meaning that the Ming (and others before the Ming) had legitimately held the Mandate at one point in time, but no longer. The Qing buttressed their own claim to the Mandate by acknowledging the Ming's legitimate claim to it in the past, in continuing to worship the Ming emperors as they did, the Qing were asserting the legitimacy of the entire system that dictated who could 'rightfully' be an emperor of China, because in fact it was this system that allowed them to present themselves to the populace as 'Sons' of Heaven' rather than as conquering foreigners who had no legitimate claim over China.²⁸⁴

The Qing's Yongzheng Emperor (ruled 1722-1735) refuted the Ming loyalist idea that *Hua* (Han Chinese)/*Yi* (non-Han Chinese) cultural differences and the territorial Manchuria/Central States (*Zhongguo*) distinction made the Qing unsuited to rule China. He argued that Manchuria is for Manchu what *jiguan* (birthplace or ancestral place) are for Han; it had family and ethnic resonances, but was as much a part of the empire as any other place, so that Manchu were legitimate Chinese rulers.²⁸⁵ Most of the years of China's "century of humiliation" occurred during the Qing, but Han Chinese do not at all look back at Manchu rule as humiliation at the hands of foreigners, because the Manchu, while a frontier people, were not foreigners.²⁸⁶

Contending that the Yuan and Qing dynasts were not Chinese rulers is no more persuasive than arguing that King George I (r. 1714-1727) was not a British monarch because he was German and seen that way by the British public, spoke English poorly, and lived 54 years in Germany before ascending the British throne. George II (r. 1727-1760), George III (r. 1760-1820), George IV (r. 1820-1830) and Queen Victoria (r. 1837-1901) all kept aspects of their German identity. They liked to speak German at court, celebrate holidays in a German manner, and married Germans. The four Georges were also rulers of Hanover, Germany -- Queen Victoria was not one only because women were barred. Yet, while their German-ness was known to all, these Hanoverian monarchs, apart from George I, were deemed paragons of Englishness and rulers of Britain and the Empire. After Queen Victoria, the British monarchs have been of German descent as well, from the House of Saxe-Coburg and Gotha.²⁸⁷

²⁸³ Owen Lattimore, *Inner Asian Frontiers of China* (Boston: Beacon Press, 1962):115-135; Lui, *Two Rulers*:3-4, 22-26.

²⁸⁴ "The Emperor in the Cosmic Order," *Living in the Chinese Cosmos: Understanding Religion in Late-Imperial China (1644-1911)*, Asia for Educators, Columbia University, <http://afe.columbia.edu/cosmos/irc/emperor.htm>.

²⁸⁵ Liu, *The Clash*:84.

²⁸⁶ Zhang Wei-Bin, *New China's Long March from Servility to Freedom* (New York: Nova Science Publishers, 2007):vii, fn. 1.

²⁸⁷ "History of the Monarchy: the Hanoverians," www.royal.gov.uk/HistoryoftheMonarchy/KingsandQueensoftheUnitedKingdom/TheHanoverians.

The historian of late imperial China Prasenjit Duara has written that “the Qing emperor was not simply a Chinese emperor, not simply the Son of Heaven. He was many things. He was the Bodhisattva Manjusri when he went to worship the Buddha; he was the Ruler of Rulers when he went to the Potala Palace in Lhasa, he was the Aisingjoro chief when he was in Manchuria.”²⁸⁸ Because China was multi-ethnic and its Manchu emperors were multi-cultural, to speak of them as “Chinese emperors” requires acceptance that the term “Chinese,” used now for peoples of many ethnicities in China, should not retroactively be restricted to Han Chinese. To do so would be inaccurate, as the Qing could not have equated “Chinese” with Han.²⁸⁹ They saw themselves and were seen by others as a multi-ethnic, multi-cultural dynasty ruling over all territory traditionally held by the preceding Han-led Ming Dynasty, plus Inner Asian territories they added to the empire. The empire and its rulers thus had both traditional Han and Inner Asian characteristics and multi-ethnically ruled both Han and what are now called ethnic minorities (*shaoshu minzu*).²⁹⁰

The Qing did not use the English “China” or other foreign terms as the name for their state. In many instances, they formally called it *Da Qing* or *Da Qingguo* (Great Qing or Great Qing state), indicating it was a Chinese dynasty and state that followed the *Da Ming* or *Da Mingguo*, but they also used the term for China that is used today, *Zhongguo*, to encompass all the empire’s territories. Joseph Esherick has pointed out

In the Qing . . . the empire [was] sometimes referred to as the Great Qing (*Da-Qingguo*) and sometimes as *Zhongguo*. The early and mid-Qing emperors repeatedly sought to identify their expanded empire as *Zhongguo*, and the term was commonly used in communications and treaties with foreign states.

In the most thorough treatment of the Qing connection with “China” (*Zhongguo*), University of Akron historian Zhao Gang has shown that soon after taking power, the Qing began to identify their empire as *Zhongguo*, including in most dealings with foreigners. *Zhongguo* did not refer to a specific ethnic group; over two millennia, most dynasties used it interchangeably with dynastic names for their state and “Whenever a non-Han group overthrew the rulers of the central country, *China* came to mean a mixture of the Han and non-Han groups.” The Yuan identified its state with *Zhongguo*. From the fall of the Ming, the terms Qing and *Zhongguo* became interchangeable official titles, with the scope of *Zhongguo* adjusted to match the Qing’s territorial expansion. That was the case whether the Manchu or Han languages were used, as the Manchu term for China that was used literally translated the Han

²⁸⁸ Prasenjit Duara, “The Legacy of Empires and Nations in East Asian,” in Pal Nyiri and Joana Breidenbach (eds.), *China Inside Out: Contemporary Chinese Nationalism and Transnationalism* (Budapest: Central European University Press, 2005):34-54 (39). No Qing emperor actually visited Lhasa, but from 1727 Qing emperors stationed representatives (*amban*) there.

²⁸⁹ There was official continuity of the idea that Tibet was part of China in the Qing/ROC transition. The last emperor, Xuantong, stated in his abdication proclamation of October 12, 1911 that a new republican state should encompass the five major ethnic groups, including the Tibetans. Sun Yat-sen, in the Temporary Constitution of the Chinese Republic (*Zhonghua Mingguo Lingshi Yuefa*) of March 11, 1912, stated that China’s territory included 22 provinces, Inner Mongolia, Outer Mongolia, Tibet and Qinghai. Pres. Yuan Shikai, who has often been accused of neglecting to protect the country’s territorial integrity, made many efforts to keep Tibet within China. Han Diandong, et al., “Mingguo chuqi quanmei guanyu Yuan Shikai dui Zang zhengce de baogao” (Reports of Yuan Shikai’s policy toward Tibet in the Early Republican Media), *Xizang Daxue Xuebao* 23(1) (2008):47-55, 68.

²⁹⁰ See James A. Millward. *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759–1864* (Stanford: Stanford University Press, 1998).

language term *Zhongguo* [Central State(s)]. The Qing emperors often referred to “our China” (*wo zhongguo*) and used it interchangeably with such other terms for the state as *wochao* (our dynasty), *guochao* (the state dynasty) and *wojie* (our territory), so that “For the Qing rulers, the equivalence of *Qing* and *China* was complete.”

In geographical works, the Qing “treat[ed] as China’s territory not just the provinces of China proper, but all Inner Asia under the Qing.” New territory added by the Qing, e.g. in Xinjiang, was said, even in the Manchu language, “to have been completely integrated into the territory of China.” Michel Benoist, a French Jesuit Qing court mapmaker, presented the Qianlong Emperor with a map in 1756 showing Manchuria, Mongolia, Qinghai and Tibet as all clearly within the *Zhongguo* borders. After Inner Asia was incorporated into China, none of its constituent areas was ever categorized as a tribute state. The Qianlong Emperor said in 1787 “Because Tibet has long been incorporated into our territory, it is completely different from Russia, which submits to our country only in name. Thus, we cannot see the Tibetans as foreign barbarians, unlike the Russians.” The Emperor’s Inner Asian subjects came to be referred to as *Zhongguo zhi min*, or peoples of China. In the very late Qing, students who concentrated on geography had to study one of what the government called “dialects of China” (*Zhongguo fangyan*), Manchu, Tibetan, Uygur or Mongol.²⁹¹

The Qing did not use “Chinese” or other foreign language terms to name their subjects nor did they equate *Zhongguoren* with only the Han, Xia or Tang people, commonly-used self-referential names derived from earlier dynasties for the people who were China’s majority ethnic group. And it was only in their last few years of rule that the Qing fixed solely on *Zhongguo* and *Zhongguoren* to designate the state and its people. Until then, people of all ethnic groups in the emperors’ territories had a common name designating them as subjects within that state -- *Da Qing Zimin* (Great Qing subjects).²⁹² *Zhongguo* (lit. Central States) or *Zhonghua* (lit. Central Efflorescent States) and *Zhongguoren* (Central States people) were often used officially, especially after the beginning of the reign of Qianlong (r. 1722-1795), but were not the sole names for the state and its people, as presented to foreigners.²⁹³

At the end of the 19th and beginning of the 20th Century, reformist intellectuals deplored the fact that, unlike most countries, the empire lacked one trans-historical name that could define its territorial boundaries against foreign countries.²⁹⁴ The adoption of *Zhongguo* as the consistently-used name for the empire was, as the reformer Liang Qichao pointed out, one that might involve adoption of a name anciently associated with Han people. Like the adoption of the ethnically-associated name “Thailand” for what was, until 1939, a country with the ethnically-neutral name Siam however, the use of *Zhongguo* by the time of the Qing had lost whatever dominant signification it had and could be applied in a manner “wider than its limited racial denotation.”²⁹⁵ The reformer Kang Youwei put it that “[The Qing government]

²⁹¹ The preceding two paragraphs summarize salient points from Zhao Gang, “Reinventing China: Imperial Qing Ideology and the Rise of Modern Chinese National Identity in the Early Twentieth Century,” *Modern China* 32(3) (2006):3-30.

²⁹² See Esherick, How:235 on the late 19th-early 20th Century reform Liang Qichao’s discussion of China’s lack of a formal name, apart from that of the dynasty.

²⁹³ Yang, ‘Zhongguo’:7.

²⁹⁴ Liu, *The Clash*:76-77

²⁹⁵ Thongchai Winichakul, *Siam Mapped: a History of the Geo-Body of a Nation* (Honolulu: University of Hawaii, 1994):18-19.

should establish as [China's] permanent national name the Chinese state (*Zhonghua guo*). Because the Manchu, Han Chinese, Mongols, Muslims and Tibetans all belong to a single state, they are all Chinese (*Zhongguo ren*) without any distinction."²⁹⁶

Both 17th and late 19th/early 20th century Han chauvinists, who sought to mobilize ethnic bias against a dynasty they saw as headed by alien "barbarians," pushed the idea that Manchu rulers were not Chinese emperors because they were not Han.²⁹⁷ The importance of their approach has often been overemphasized by historians: even before the Qing downfall, the chauvinist view came to be rejected by most Han intellectuals, who favored a multi-ethnic state and, after the overthrow of the Qing, it faded.²⁹⁸ Such Han chauvinism was similar to the present-day Hindu chauvinism of the RSS and its political party the BJP, who want to ensure Hindu hegemony over India's 150 million Muslims. They claim that India's Mughal dynasts (1526-1858) were not Indian rulers.²⁹⁹ The founder of India's Mughal Empire, Zahir al-Din Muhammad Babur (1483-1530) was a Central Asian, a Chaghatai-Turkish prince directly descended from Chinggis Khan and Timur.³⁰⁰ Mughal rulers were "true Timurids who enthusiastically embraced Timurid legitimacy and consciously presided over a Timurid renaissance on the Indian subcontinent."³⁰¹ Because both had been steppe peoples, Mughal rulers had some cultural practices in common with Manchu, such as a peripatetic court, summer tent encampments, etc.³⁰² Just as the Manchu became avowedly Chinese, the Mughals became explicitly Indian.

Although the first two Timurid emperors and many of their noblemen were migrants to the subcontinent, the dynasty and the empire itself became indisputably Indian. The interest and futures of all concerned were in India and not in ancestral homelands in the Middle East or Central Asia. Furthermore, the Mughal Empire emerged from the Indian historical experience.³⁰³

It has been noted moreover that, "The modern territorial state in India was introduced by the Mughals, whose political, military and financial systems were copied by their enemies and successors."³⁰⁴ The same holds true, in many respects, of the Qing.

²⁹⁶ Quoted in Zhao, *Reinventing*:21.

²⁹⁷ Yoshihiro Ishikawa, "Anti-Manchu Racism and the Rise of Anthropology in the early 20th Century China," *Sino-Japanese Studies* 15 (2003):7-26; Prasenjit Duara, *The Global and Regional in China's Nation-Formation* (London: Routledge, 2009):100-101.

²⁹⁸ See Zhang Yong, "Cong shiba xingqi dao wuse qi: Xinhai geming shiqi cong Hanzu guojia dao wuzu gonghe guojia de jianguo moshi zhuanbian" (From the 18-star Flag to the 5-Color Flag: Change during the 1911 Revolution in the View of the State from Han State to Five-ethnic Group Republic), *Beijing Daxue Xuebao* no. 2 (2002):106-114; Esherick, *How*:244.

²⁹⁹ The BJP has referred to the Mughal periods as "when barbaric aliens were ruling the country." BJP, *White Paper of Ayodhya* (1993):20, <http://www.hvk.org/specialrepo/bjpw/ch2.html>. Some non-Indians have also made this assertion. See, e.g. Paul Richard "The Imperial Mind," *Washington Post* (WP) Sept. 25, 1981 ("The Mughals were not Indian").

³⁰⁰ Lisa Balabanlilar, "Lords of the Auspicious Conjunction: Turco-Mongol Imperial Identity on the Sub-Continent," *Journal of World History* 18:1 (2007):1-39 (1).

³⁰¹ Stephen Dale, "The Legacy of the Timurids," *Journal of the Royal Asiatic Society* series 3, 8:1 (1998):43-58 (43).

³⁰² Balabanlilar, *Lords*.

³⁰³ John F. Richards, *The Mughal Empire* (Cambridge: Cambridge University Press, 1993):2.

³⁰⁴ Hermann Kulke and Dietmar Rothermund, *A History of India*, 3d ed. (London: Routledge, 1998):333.

Apart from the German Hanoverian British and Central Asian Mughal Indian monarchs, many other rulers have come from outside a state, but have soon come to be seen as belonging as much to it as those whose ancestors were “indigenous” to the state. The Hashemite rulers of Jordan came from Saudi Arabia after World War I, but within a generation, under King Hussein, were regarded as Jordanian.³⁰⁵ Although Chinese Thais are 14% of Thailand’s population,³⁰⁶ the country’s elites are mostly Chinese Thai.³⁰⁷ Ethnic Thai chauvinists argue that the many politicians hailing from the ethnic Chinese minority, including three-fourths of the members of parliament in the year 2000³⁰⁸ and most of Thailand’s recent prime ministers, are a foreign imposition.³⁰⁹ In the 2008-2009 confrontations between yellow-shirted supporters of Prime Minister Abhisit Vejjajiva and red-shirted supporters of former PM Thaksin Shinawatra however, each group backed its own Chinese Thai politician,³¹⁰ who the members of these large movements certainly regarded as fully Thai.

The Qing rulers conceived of themselves as both Chinese emperors and as leaders of an Inner Asian people connected to other Inner Asian peoples who were the emperor’s subjects. The historian of the Qing Joanne Waley-Cohen has observed that

Qing rulers simultaneously claimed descent from two separate sets of tradition – Chinese and Inner Asian. They used this double heritage both to reinforce and to clarify in complex ways the multivalent identity that they sought to project of themselves. Thus in one mode they held themselves out as Confucian sage rulers of China whose authority derived from their benevolence, learning and virtue, while in another they drew variously on the traditions of Inner Asia, as represented chiefly by Mongolia and Tibet to represent themselves variously as warrior-khans, and under Buddhist influence, as turners of the wheels of time toward salvation and the closing of ages.³¹¹

The evolving Qing hybridity included retained Manchu ethnic consciousness and multi-culturalism, with Han culture and Tibetan religion playing prominent roles.³¹² “[A]s rulers of China, the Qing explicitly sought to emulate and surpass the glorious Tang period (618-906).” The Tang had Turco-Mongolian origins, but was “considered one of the greatest native dynasties of Chinese history.”³¹³ The Qing rulers knew that if the Tang, with its non-Han provenance, could be regarded as quintessentially Chinese, so too could they. Moreover, their acculturation to Han ways reached the

³⁰⁵ “The Hashemites: Jordan’s Royal Family,” http://www.kinghussein.gov.jo/hash_intro.html; “Kings of Sand,” United Press International, Aug. 16, 1992.

³⁰⁶ Jason Gagliardi, “Chinese Community has Come Along Way,” SCMP, Dec. 5, 2005.

³⁰⁷ Denny Roy, “Southeast Asia and China: Balancing or Bandwagoning?” *Contemporary Southeast Asia* 27(2)(2005):305-322 (313). See also Patrick Jory, “Multi-culturalism in Thailand: Cultural and Regional Resurgence in a Diverse Kingdom” *Harvard Asia-Pacific Review* 4:1 (Winter 2000):18-23.

³⁰⁸ Edward Tang “Thai Candidates Flaunt their Ethnic Credentials,” ST, July 4, 2000.

³⁰⁹ Such ethnic Thai chauvinist analyses can be found on the internet. See, e.g. Laosuwan, “Have Ethnic Chinese Taken Control of Thailand?” Mar. 14, 2006, The Nation Weboard, <http://www.nationmultimedia.com/board/thaipol/view.php?id=624&offset=0>.

³¹⁰ Greg Torode, “Can Abhisit Unite Thais?” SCMP, Jan. 3, 2009; Eric Teo Chu Cheow, “Diaspora Bridges China and Asean,” *Japan Times*, Feb. 19, 2005.

³¹¹ Joanne Waley-Cohen, *The Culture of War in China* (New York: IB Tauris, 2006):2.

³¹² See Patricia Anne Berger, *Empire of Emptiness: Buddhist Art and Political Authority in Qing China* (Honolulu: University of Hawaii Press, 2003):6

³¹³ Waley-Cohen, *The Culture*:2-3.

point that by the mid-19th Century “the Qing rulers appear to have all but abandoned their Altaic heritage” in favor of Han culture.³¹⁴

The Manchus relied heavily on Chinese precedents and the political and moral vocabulary of neo-Confucian political values to consolidate and legitimate their rule. They also borrowed the essential framework for the government of China from their predecessors, the Ming. Moreover, within three generations of the conquest, many Manchus spoke and wrote Chinese better than they spoke and wrote Manchu, and their devotion to the pursuit of the arts of the refined (and not so refined) Chinese gentleman exceeded that of the Chinese themselves. Because many Qing imperial institutions *were* modeled directly on Ming precedents and because Manchu acculturation *was* widespread by the nineteenth century, it is hard to deny the importance of Chinese influence on the Manchus and Manchu rule.³¹⁵

The Qing and its Manchu Bannermen families became so Chinese that “the hero of Manchu children in Hangzhou was Yue Fei, a symbol of Han opposition to the Jurchen, the purported twelfth-century ancestors of the Manchu themselves.”³¹⁶

The Qing perceived itself as the successor to the dynasties of China that had come before it, which included being the political heir to its immediate, Han Chinese-led predecessor, the Ming, whose modes of governance and rituals it left largely intact.³¹⁷ The ROC government in turn asserted it was the successor to the Qing, which it saw as a dynasty of China: “[T]he new regime claimed to be the legitimate successor to the Qing and hence to all its far-flung territories and variegated populations.”³¹⁸ The PRC government regarded the ROC as successor to the Qing and itself as successor to the ROC: “[Mao Zedong] shared with Sun [Yat-sen] a basic vision of the territorial bounds of the Chinese state, as the successor to the Qing. Like him, and indeed Chiang Kai-shek, Mao’s goal was not to dismantle the remnants of the Qing Empire, but to transform them into a modern Chinese state.”³¹⁹ A US court, in considering Qing-issued bonds, has concurred. It found that the ROC was the successor of the Qing and PRC was the Qing’s subsequent successor.³²⁰ The ROC government made it

³¹⁴ Elliot, *The Manchu*:357.

³¹⁵ Elliot, *The Manchu*:28.

³¹⁶ Duara, *Deconstructing*:113.

³¹⁷ Hsu, *The Rise*:29. See also Lui, *Two Rulers*:69 (“The Manchu founders . . . posed as the legitimate successors to the Ming imperial line and stressed that their conquest was but a means to relieve the Chinese people from the misrule of Li Tzu-cheng, the bandit chief”). Lui also notes the admiration of the early Qing’s Shunzhi Emperor for the Ming rulers. Id.

³¹⁸ Edward Rhoads, *Manchus and Han: Ethnic Relations and Political Power in the Late Qing and Early Republican China, 1861-1928* (Seattle: University of Washington Press, 2000):294.

³¹⁹ Michael Yahuda, “The Changing Faces of Chinese Nationalism: the Dimension of Statehood,” in Michael Leifer (ed.), *Asian Nationalism* (London: Routledge, 2000):21-38 (28). Mao, who presided over a strengthening state, more consistently upheld China’s territorial integrity. Several years before the overthrow of the Qing, Sun proposed to give the northeast to Japan in exchange for its backing of revolution and in the years immediately after the revolution, sought to negotiate a European military invasion in the context of civil war in China. Zhang, “Cong Shiba”:108; Kirby, *When Did*:112.

³²⁰ *Jackson v. People’s Republic of China*, 550 F. Supp. 869, 872 (N.D. Ala. 1982), rev’d on other grounds, 596 F. Supp. 386 (1984), aff’d, 794 F.2d 1490 (1986), cert. denied, 480 U.S. 917 (1987) (acts creating debt in Imperial China valid in both successor Republic of China and subsequent successor People’s Republic of China).

clear from its outset that it was the legal successor by announcing that it was willing to pay the debts and honor the treaty obligations of the Qing.³²¹

Contrary to the claims of some observers,³²² it does not matter that Tibet's political incorporation into imperial China did not take the form of making Tibet a province of China. Chinese emperors' worldviews were not based on European-derived political-legal norms,³²³ such as the need to provincialize all territory they ruled, until they felt forced to do so by Western encroachments.³²⁴ In fact many countries have had areas that were incorporated in their national territory, yet were not provinces. For example, the territory of Alaska was incorporated into the US in 1863, when the US purchased it. Hawaii was incorporated into the US in 1900, pursuant to an act of Congress.³²⁵ Both only became states (provinces) of the US in 1959. Tibet was as much a part of China, even while not a province, as were Arizona and New Mexico part of the US, when they were incorporated US territories from 1850-1912.³²⁶ In fact, even unincorporated territories, such as Puerto Rico in the first half of the 20th Century, were deemed to "belong to" the US, although they were not "part of" it.³²⁷ Hong Kong and Macau today are not provinces, but are indisputably parts of China.

Michael Reisman, a Yale University professor of jurisprudence, has noted that "International law has traditionally tolerated temporary lapses in the control of central authorities over peripheral territories caused by internal disruptions."³²⁸ Thus, Tibet's status as part of China was not altered because the central government lost control over central-western Tibet in 1913-1951. Because China never abandoned its claim, even a decades-long hiatus from control does not support Tibet independence. Several pseudo-states have been around for many years or even decades (Tamil Ealam, Somaliland, the TRNC, etc.). The relatively weak central governments of the states to which these territories belong may not have been unable to reclaim them, that despite the lack of recognition of these territories as states, the hiatuses in control over them by central governments amount to changes in their status.

For example, in 2009, Sri Lanka extinguished Tamil Eelam by force., but even the Tamil Tigers had not actually claimed that by itself the 26 years of Tamil Eelam's

³²¹ Joseph Esherick, *Reform and Revolution in China: the 1911 Revolution in Hunan and Hubei* (Berkeley: University of California, 1976):190.

³²² See, e.g. Abanti Bhattacharya, "Chinese Nationalism and the Fate of Tibet: Implications for India and Future Scenarios," *Strategic Analysis* 31:2 (2007): 237-266. China's government has never claimed Tibet was a province of China, but was an autonomous territory of the Chinese empire and republic. See "Visit of Chou En-lai to India," (Dec. 31, 1956/Jan. 1, 1957) in *Selected Works of Jawaharlal Nehru*, v. 36, http://www.claudearpi.net/maintenance/uploaded_pics/ZhouonMcMahon.pdf. Tibet is still not a province (*sheng*), but one of five PRC autonomous regions (*zizhi qu*).

³²³ Neither did the Lhasa government. As McKay, *Tibet and:196* puts it, old Tibet "was not a nation-state in the European understanding. Despite centralizing structures, it included a variety of political and administrative formations in which a single central power did not consistently maintain authority throughout a fixed territory."

³²⁴ Lord George Hamilton, Secretary of State of British India, sent a February 27, 1903 dispatch stating that Tibet "still must be regarded as a province of China" and was a "portion of the Chinese Empire." Quoted by Lord Reay, House of Lords debate, *Hansard* (February 26, 1904):1117

³²⁵ *Rassmussen v. United States*, 197 US 516 (1905) (Alaska); *Hawaii v. Mankichi*, 190 US 197 (1903).

³²⁶ Juan Perea, "A Brief History of Race and the US-Mexican Border: Tracing the Trajectories of Conquest," *UCLA Law Review* 51 (2003):284-312 (298-301).

³²⁷ Bernard Schwartz, *A History of the Supreme Court* (Oxford: Oxford University Press, 1993):187.

³²⁸ Michael Reisman, "The Struggle for the Falklands," *Yale Law Journal* 93 (1983):287-317.

existence -- or the 70,000 deaths in a war to maintain it --³²⁹ created a right to independence. Indeed, if the Tigers' authority over territory created that right, it would mean that their loss of that same territory would extinguish the right, a proposition to which the Tigers are unlikely to subscribe. Similarly, Tibetan exile leaders who claim that the 39 years of unrecognized "de facto independence" created or reinforced a right to independence, would have to confront the proposition that the subsequent 58 years (and counting) of loss of their control over Tibet has lost them that "right." Tibetan émigré leaders moreover have themselves argued that a temporary loss of control, even of some years, does not alter a territory's status. The Dalai Lama's ex-New York representative has (erroneously) said that the eastern Tibetan areas were part of the Lhasa government's territory before 1949,³³⁰ but also that Lhasa temporarily lost control over some of this territory during the 1930s and 1940s. He nevertheless has contended that all of Amdo and Kham should be seen as having remained part of Tibet as of right.³³¹

IX. India, the US and Claims of Tibet's "Right to Independence"

Neither India nor the US has ever held Tibet was independent in the modern era or that it has a right to independence, yet "Tibet independence" impacts relations between the world's two most populous states and between its two most influential states. As long as the Dalai Lama claims Tibet was independent and has a right to independence, most Indian and US elites will agree, adding to hostility toward China, including support for confrontation over issues not be directly related to Tibet.³³²

A. India/China

Tibet independence is related to India/China disputes about the McMahon Line allocation to India of territory now part of Arunachal Pradesh, which Indians say Chinese conceive of as "South Tibet."³³³ The disputes led to border clashes and wars, especially in 1959, 1962, 1967, and 1987.³³⁴ Indian elites continue to chafe at their

³²⁹ "The World Reacts to Kosovo Independence," FT, Feb. 18, 2008.

³³⁰ No modern state, in dealings that concerned eastern Tibetan areas regarded them as under the Dalai Lama's administration. For example, when the US decided to start supplying eastern Tibetan rebels in 1956, it did not seek the Dalai Lama's approval. Goldstein, *The United States*:149

³³¹ Phintso Thonden, "Rejoinder: on the Dragon's Side of the Tibet Question," *Tibetan Review* 26:5 May 1991:12-20 (13).

³³² Indian elites do not all favor the émigré cause. See the Mar. 26, 2008 editorial "The Question of Tibet" in *The Hindu*, a widely-circulated paper edited by the "left-leaning" N. Ram. It notes that no state disputes Tibet is part of China or recognizes the TGIE, criticizes the exile proposal for a "high level" or "maximum" autonomy for a "Greater Tibet," argues that exiles should not be allowed to engage in anti-China activities on Indian soil and urges the Indian government to press the Dalai Lama "to get real about the future of Tibet -- and engage in a sincere dialogue with Beijing." The editorial resembles one in Taiwan's largest circulation (and pro-KMT) English-language newspaper which pours cold water on the "grandiose scheme for Tibet's de facto independence" and terms the demands for "Greater Tibet" and "genuine autonomy" "an insincere effort at best, bordering on unrealistic" and "surely out of the question." "Lowering Tibet's Expectations," *China Post*, Feb. 15, 2009.

³³³ "Chinese Whispers," IE, Apr. 15, 2009. Thus far, only Indian, rather than Chinese sources have claimed that the term "South Tibet" is used by Chinese.

³³⁴ J. Mohan Malik, "India-China Relations in the 21st Century: the Continuing Rivalry," in Brahma Chellaney (ed.) *Securing India's Future in the New Millennium* (New Delhi: Orient Blackswan, 1999):337-391 (390). India maintained a "forward policy" and refused to negotiate about the border until 2005. See Chung Chien-peng, *Domestic Politics, International Bargaining and China's Territorial Disputes* (London: Routledge, 2004).

army's drubbing by Chinese forces in Arunachal in 1962, a war related to Tibet independence in terms of both cause and effect. Nehru told his intelligence chief in 1954 that the Indian government would turn a blind eye to Tibetan émigré aid to anti-Chinese efforts in Tibet, if the refugees did not act openly.³³⁵ Thereafter India backed efforts of a group led by the Dalai Lama's brother and CIA agent Gyalo Thondup to smuggle propaganda and goods into Tibet and extract intelligence.³³⁶ An Indian journalist has put it that "[Indians] believe that it was the Chinese invasion of Tibet that set off the chain of events that culminated in our military defeat at the hands of the Chinese in 1962" because India's government did not contest China's sovereignty in Tibet.³³⁷ India's official history of the 1962 war states that Tibet was a basic cause of the conflict, in that "Indian asylum to Dalai Lama raised Chinese suspicions about ultimate Indian intentions."³³⁸ After the war, India's Intelligence Bureau chief B.N. Mullik told Gyalo Thondup that India now supported Tibet's "eventual liberation."³³⁹

Although armed clashes have abated, diplomatic imbroglios over the border issue and scenarios for fostering Tibet independence continue. China's ambassador to India Sun Yuxi said in 2006 that all of Arunachal (84,000 sq. km; 1.1 million people) is part of China, although the state's traditionally Tibetan Tawang area (2,000 sq. km; 38,000 people) is China's primary interest.³⁴⁰ Local officials insist "every inch of Arunachal Pradesh is an integral part of India."³⁴¹ In 2007, the BJP's claim that there was a 20-km. Chinese incursion into Arunachal caused a stir, although India's Home Minister denied it ever happened.³⁴² When China refused a visa for an Arunachal official on the ground that as a Chinese citizen, he did not need one, India cancelled the trip to China of a large delegation of which the official was a part.³⁴³ India's External Affairs Minister Pranab Mukherjee, visiting Tawang in 2008, said that India "would not compromise with its territorial integrity and sovereignty at any cost," but Sun Yuxi stated that "Arunachal is a disputed area. We must make mutual compromises on that."³⁴⁴ China also caused the deferral of a 2009 Indian application for an Asian Development Bank loan to carry out a watershed project in Arunachal.³⁴⁵

³³⁵ B.N. Mullik, *My Years with Nehru: the Chinese Betrayal* (New Delhi: Allied Publishers, 1971):85, 180-183.

³³⁶ Knaus, Orphans:119-124; Mullik, *My Years*:180-183. CIA agents involved with Tibetan guerrillas in the 1950s and 1960s have appraised Gyalo Thondup as "by the far the most import CIA asset." John B. Roberts, "The Secret War over Tibet," *American Spectator* 30:12 (1997):30-36 (32).

³³⁷ Vir Sanhvi, "India, China and Tibet," *Hindustan Times* (HT), Apr. 19, 2008.

³³⁸ P.B. Sinha and A. A. Athale, *History of the Conflict with China, 1962* (New Delhi: Ministry of Defence, 1992):412.

³³⁹ Kenneth Conby and James Morrison, *The CIA's Secret War in Tibet* (Lawrence: University of Kansas, 2002):179.

³⁴⁰ Ravi Velloor, "China and India Reaffirm Claims to Disputed State," ST, Nov. 15, 2006; "China Needs Tawang to Win Over Tibetans: Chinese Expert," Indo-Asian News Service (IANS), July 25, 2007; Hoffmann, Rethinking:192. An Indian Army move to set up a permanent post in Tawang almost sparked a mid-1980s war. "Alleged Chinese Intrusion in Arunachal Poses Threat to Territorial Integrity: BJP MP," HT, May 7, 2007. China's ex-ambassador to India Zhou Gang has said that "Tawang belongs to China. It is the birthplace of the 6th Dalai Lama and the Dalai Lama is 'China's Dalai Lama' who cannot be 'India's Dalai Lama.'" Arunachal Worried Over Chinese Claims: Chief Minister," IANS, Nov. 24, 2007.

³⁴¹ "Hard Work Pays Off," *Statesman* (India), Oct. 28, 2008.

³⁴² "No Chinese Intrusion in Arunachal: Patil," IANS, May 9, 2007.

³⁴³ Clarissa Oon, "Beijing Sidesteps Visa Dispute with New Delhi," ST, May 30, 2007.

³⁴⁴ "The Chinese Claim," HT, Nov. 27, 2008.

³⁴⁵ "Front Page India Upset Over ADB's Decision to Put Off," *Business Line* (India), Apr. 18, 2009.

A section of Indian elite opinion holds that Nehru should not have acquiesced in China's position in Tibet in the early-mid 1950s and that the BJP should not have reaffirmed it in 2003.³⁴⁶ Some argue that India's Himalayan territories can only be protected by withdrawal of Indian recognition of China's position in Tibet or its roll-back.³⁴⁷ In that way, "Tibet independence" is connected to the view of almost three-fourths of Indians polled in 2006 who said that China's rise as a world power will be a critical or important threat to Indian interests within the next ten years.³⁴⁸ Despite holding a small joint military exercise with China in 2007 -- devoted in part to countering separatism --³⁴⁹ the China Threat view is especially prevalent in the Indian military. Such thinking informed 2009 Indian war games based on apprehension of "Chinese aggression" before 2017. The expected war would be fought on the border of India's northeast with Tibet, where China has much improved infrastructure on its side. Indian planners anticipated "China would call Dalai Lama for rapprochement and neutralize him."³⁵⁰ Thus, before China's assumed attack, the Dalai Lama will have convincingly demonstrated his abandonment of independence, allowing China to confidently use Tibet as a jumping off point for its supposed "aggression."

Indian state elites who think in terms of a China Threat regard Tibet's status as part of China as an obstacle to India preparing to deal with the threat, including militarily. An Indian army Major General, writing in a defense publication in 2009, deplored that the Indian government had acquiesced in Tibet's re-incorporation into China, but approved that "After the 1962 war, India allowed Dalai Lama unrestrained freedom of activity . . . India encouraged Dalai Lama to open offices in New York and Geneva." Tibet's status as part of China would however make it difficult for India to confront China militarily: "Any envisaged Indian offensive into Tibet does not hurt mainland China. Indian Air Force does not have the reach up to mainland china. Any offensive undertaken by India into Tibet will be in a void."³⁵¹ The implication is that a change in Tibet's status would radically alter India's military capabilities in relation to China.

Such thinking raises the possibility of an Indian war with China over Tibet, the subject of a 2009 essay by Dan Twining, a former US State Department Policy Planning Staff Asianist who blogs for the prominent journal *Foreign Policy*.³⁵² Twining discusses the "external dimension to the Tibetan crisis, one that implicates core national security of nuclear-armed great powers." He argues that "the nexus of Tibet and the unresolved border conflict between China and India ranks with the Taiwan Strait and Korean peninsula among Asia's leading flashpoints" and notes India's building of roads and airfields to speed troops to the disputed border.

³⁴⁶ See, e.g., India Faces Threat from China, Pakistan: Jaswant," IANS, July 6, 2008; "Spotlight: the End of Tibet," *The Statesman* (India), Sept. 29, 2008.

³⁴⁷ See, e.g., Brahma Chellaney, "India's Muddle Path," HT, Mar. 18, 2008; Mahesh Jethmalani, "A Stop to Himalayan Blunders," HT, Apr. 9, 2008.

³⁴⁸ "Global Views 2006: Topline Data from India Public Survey," Chicago Council on Global Affairs, (Sept. 2006):6, http://www.thechicagocouncil.org/UserFiles/File/POS_Topline%20Reports/POS%202006/2006%20India%20Topline.pdf.

³⁴⁹ "China, India Hold their First Joint Military Exercise," RIA Novosti, Dec. 20, 2007.

³⁵⁰ Rahul Singh, "Indian Army Fears China Attack before 2017," HT, Mar. 26, 2009.

³⁵¹ Sheru Thapliyal, "Tibet: the Real Issue," *India Defence Review* 22:4(2009), <http://www.indiadefencereview.com/2009/02/tibet-the-realissue-2.html>.

³⁵² Dan Twining, "Could China and India Go to War over Tibet?" *Foreign Policy* (Mar.10, 2009), <http://shadow.foreignpolicy.com/blog/3313>.

Twining refers to Indian warnings to China about border territory, to cards India has to play that include the TGIE, and to India continuing its former colonial master's now-abandoned policy of only recognizing China's suzerainty, not sovereignty, in Tibet. That view is inaccurate in that "Official India too has stopped using the term 'suzerainty' with reference to Beijing and Lhasa" and Prime Minister Vajpayee stated in 2003 that "The Indian side recognizes that the Tibet Autonomous Region is part of the territory of the People's Republic of China." Nevertheless, "Indian officials explained then that Vajpayee's words were a bow to the current reality" and that his formulation "is silent on the history of the relationship between Beijing and Lhasa"³⁵³

For official India then, whether Tibet is *legitimately* part of China may remain open and support may yet be offered for Tibet's "right to independence." Srikanth Kondapali, a professor of China studies at Jawaharlal Nehru University, has stated "India is a party to the trilateral relations among China, India and the Tibetans. Without this [Tibet sovereignty] issue resolved to the satisfaction of all three, I don't think bilateral relations can properly normalize."³⁵⁴ In any case, Twining avers that in an India/China conflict over Tibet, "historic US support for the cause of human rights in Tibet, in addition to Washington's growing military ties with New Delhi, mean that the United States would find it difficult to be a neutral arbiter . . ."

An analyst at India's Institute for Defence Studies and Analysis (IDSA) has written that "The Tibet crisis has deepened Indian mistrust for China. By the end of 2008, India's Minister of External Affairs openly described China as posing a serious challenge to Indian interests." That Minister is a Congress Party leader. The opposition BJP, backed by many Tibetan exiles,³⁵⁵ proclaims that "India should whole-heartedly support the cause"³⁵⁶ and hopes to "uproot the Chinese rule from Tibet," in the words of a senior BJP leader.³⁵⁷ It protests against Indian government efforts to control exile protests, because "the Chinese . . . colonization of Tibet amounts to the crushing of an entire people and civilization."³⁵⁸ The IDSA analyst also noted specific Indian concerns involving Tibet, such as the building of hydro-infrastructure in Tibet, "enhancing China's military capability and enabling it to pursue a subtle coercive water diplomacy vis-à-vis India."³⁵⁹ Another IDSA analyst has said that "Given the presence of a large Tibetan diaspora in India and the intractable border dispute, the Tibet factor remains alive" in India/China relations and one option that might come into play is that "India could recognize the democratically-elected TGIE, if relations with China deteriorate, and some other states may follow suit."³⁶⁰

B. US/China

³⁵³ C. Raja Mohan, "India's Tibet Ambiguity," IE, Nov. 27, 2008.

³⁵⁴ Ng Tze-wei, "Long-standing Source of Tension in Ties with India," SCMP, Mar. 12, 2009.

³⁵⁵ See, e.g., "Don't Trust the Chinese, Say Tibetan Students," *Statesman* (India), Apr. 9, 2008; "That Tightrope Called Tibet," IE, Aug. 21, 2003.

³⁵⁶ "Year-long Programmes to Muster Support for Tibetan Cause," PTI, Jan. 27, 2007.

³⁵⁷ "Tibetan Refugees Hold Protest March Against Chinese Occupation," PTI, Aug. 7, 2008.

³⁵⁸ "Indian Opposition Party Accuses Government of 'Complete Surrender'" PTI, Apr. 28, 2008.

³⁵⁹ "Phunchok Stobdan, "An Indian Perception of the Tibetan Situation," *Asia Pacific Bulletin* no. 31 (Mar.20, 2009):1-2.

³⁶⁰ Abanti Bhattacharya, "Chinese Nationalism and the Fate of Tibet: Implications for India and Future Scenarios," *Strategic Analysis* 31:2 (2007):237-266 (259, 262).

Although the US has never recognized an independent Tibet or a “right to independence,” US political elites have a history of supporting exiles who do support Tibet independence. In 1948, before the Communists won national power in China, the US still clearly recognized China’s sovereignty in Tibet.³⁶¹ In 1949, with the Cold War underway, the US considered recognizing a Tibetan émigré regime, if the CCP retained national power.³⁶² In 1951, it advised the Dalai Lama to reject any pact with the PRC³⁶³ and later supported rebels in eastern Tibet.³⁶⁴ In 1959-1960, the US used “suzerainty” in a public document and considered supporting Tibet independence, but concluded that if it declared that Tibet is independent (presumably by recognizing the TGIE), few other states would follow suit.³⁶⁵ From 1959 to 1971, the US financed the émigré regime, an unsuccessful guerrilla war, and the Dalai Lama himself.³⁶⁶ Although the US counseled that more political mileage could be had by Tibetan exiles emphasizing human rights, rather than sovereignty, the exiles stressed the latter and their activities at the UN and other forums were paid for by the CIA, which also set up some “Tibetan aid groups” and infiltrated others.³⁶⁷

After exile internationalization of the Tibet issue began in 1987 with a speech by the Dalai Lama to Congress in which he said that Tibet had been “fully independent” until 1950 and was under “illegal occupation,”³⁶⁸ members of Congress pressed the Reagan administration to back Tibet independence.³⁶⁹ US mass media advanced the idea that support for independence was widespread among Tibetans and that US leaders should think about how to help realize it.³⁷⁰ With the Soviet collapse of the early 1990s, support was reported in the US administration for backing separatism in China, if it retained “unfair” trade practices, proliferated missiles and nuclear technology, and continued human rights abuses.³⁷¹ Congress resolved that Tibet is an “occupied country” and that its true representatives are the Dalai Lama and TGIE.³⁷² In the mid-1990s, some US politicians spoke of helping the exiles to separate Tibet from China, including by providing arms.³⁷³ Asia-Pacific states, including US allies, were moved to tell Washington that they regarded US encouragement of Tibet

³⁶¹ See extracts, *Foreign Relations of the United States, series 1948, vol. VII, The Far East: China* (Washington: State Department, 1973), <https://nl.savetibet.org/advocacy/us/chronology,1949.php>.

³⁶² Ruth Bacon, “Memorandum by Miss Ruth E. Bacon of the Office of Far Eastern Affairs to the Chief of the Division of Chinese Affairs,” *FRUS series 1949* (Washington: GPO) [no. 6930031 Tibet/1-849].

³⁶³ Patricia Carley, *US Responses to Self-determination Movements: Strategies for Non-Violent Outcomes and Strategies for Secession* (Washington: United States Institute for Peace, 1997):11.

³⁶⁴ Shakya, *Dragon*:170-180.

³⁶⁵ *FRUS 1958-1960, 19* (Washington: GPO, 1996):394; Goldstein, *The United States*:151. The then-CIA director privately recognized that Tibet had for many years been part of China. Id.:152.

³⁶⁶ John Knaus, *Orphans of the Cold War: America and the Tibetan struggle for Survival* (New York: Public Affairs, 1999); “Tibet Rules out Lama Links with CIA,” *IE*, Oct. 3, 1998.

³⁶⁷ Roberts, *The Secret*:34.

³⁶⁸ Dalai Lama, “Address to the United States Congress, September 21, 1987,” <http://www.freetibet.org/about/dalai1>.

³⁶⁹ Jeff Jackson; no title, *States News Service (SNS)*, Oct. 21, 1987; Elaine Sciolino, “U.S. is Reassessing Response to Tibet,” *NYT*, Oct. 18, 1987.

³⁷⁰ See, e.g., Daniel Southerland, “US Ambassador to Beijing Expresses ‘Deep Concern’ in Visit to Tibet,” *WP*, Aug. 17, 1988 (there is “widespread Tibetan sentiment in favor of a free and independent Tibet”); Judy Woodruff, “Trouble in Tibet” *MacNeil/Lehrer NewHour*, Oct. 8, 1987 (the question is “what, if anything, the United States can do to promote [Tibet’s] independence”).

³⁷¹ Leslie Gelb, “Breaking China Apart,” *NYT*, Nov. 13, 1991.

³⁷² “Bush Signs Foreign Relations Authorization Act,” *CNA*, Oct. 30, 1991.

³⁷³ “US Congressman calls Christopher’s Beijing Visit a Fiasco,” *CNA*, Mar. 18, 1994.

independence as interference in China's internal affairs.³⁷⁴ A renowned US China specialist, Franz Schurmann, observed that the US both treated China as a business partner and pursued a policy aimed at its disintegration.³⁷⁵

Tibet independence is related to the negative view of China promoted by politicians and the mass media in the US since the late 1980s, which has convinced most Americans of the existence of a "China Threat."³⁷⁶ Polls taken in 2001 and 2009 found that two-thirds of Americans feared that China could pose a political and military threat within the next decade.³⁷⁷ Most Americans -- 59% of those polled in 2008 -- also do not believe that Tibet should be part of China. Only 5% believe that it is a "natural part of China,"³⁷⁸ an expected result given the China Threat discourse and a generation of one-side treatment of the Tibet Question in US media.³⁷⁹

In the US, as in India, conservative elites place the Tibet issue in a national security framework. An ex-National Security Council senior director for Asian affairs has argued "it's strategically important for the United States to ensure as much international support for His Holiness as possible." Exile elites are in turn enthusiastic about their affinity with conservatives. The Dalai Lama's Special Envoy for negotiations with the Chinese government has stated that "President Bush has been a tremendous friend and supporter of this issue. We have always been very grateful -- and we would very much like the Obama administration to take it up where the Bush administration has left it."³⁸⁰ Chinese sources have stated that Obama and the State Department have explicitly said that the US will not support Tibet independence,³⁸¹ but US media have yet to confirm it. As in India, the US has not expressly recognized that Tibet is legitimately part of China.³⁸² The US thus appears to retain the option to support Tibet independence, if there is a strong downturn in US/China relations or, for that matter, in support of India in a confrontation with China.

X. Conclusion: Abandoning Tibet Independence

³⁷⁴ Michael Richardson, "Allies' Fears Spark Fence-mending Trip," *Australian*, July 11, 1996, 8.

³⁷⁵ Franz Schurmann, "Stakes in MFN debate," *Japan International News Network*, June 11, 1997, www.pacificnews.org/jinn/stories/3.12/970611-china.html.

³⁷⁶ There is a cottage industry of US "China Threat" books, none of them by China specialists. See, e.g., Peter Navarro, *The Coming China Wars: Where it will be Fought and How it will be Won* (Upper Saddle River: Pearson, 2008); Guy Sorman, *The Empire of Lies: the Truth about China in the Twenty-first Century* (New York: Encounter Books, 2008); Eamonn Fingleton, *In the Jaws of the Dragon: America's Fate in the Coming Era of Chinese Hegemony* (New York: St. Martin's Press, 2008).

³⁷⁷ "Poll Finds Fear of China Works Against Asian-Americans," SCMP, Apr. 23, 2009.

³⁷⁸ "Should World Leaders Skip the Olympics," Harris Poll #55, May 21, 2008, www.harrisinteractive.com/harris_poll/index.asp?PID=909.

³⁷⁹ See Jude Carlson, "Tibet in the News," *Bulletin of Concerned Asian Scholars* 24:2 (1992):25-44.

³⁸⁰ Quoted in Allen, *Lost Horizon*.

³⁸¹ "Chinese President Hu Jintao Meets with his US Counterpart Obama," SNS, Apr. 2, 2009 (Chinese Foreign Ministry says Obama told Hu "Tibet is a part of China, and the United States will not support 'Tibet independence'"); "US Reiterates Opposition to 'Tibet Independence,'" XH, Mar. 17, 2009 (US Deputy Assistant Secretary of State for East Asian and Pacific Affairs John Norris, meeting with Tibetan deputies of China's National People's Congress stated that "Tibet is part of China and the United States does not support 'Tibet independence.'").

³⁸² Chinese wire services asserted that in 2008-2009 France's Ambassador to China and the Speaker of the French Assembly, stated that Tibet is an inalienable part of China. "Will Sarkhozy Cancel His Meeting with the Dalai at the Last Minute?" *Zhongguo Tongxun She*, Dec. 1, 2008, in BBCWM, Dec. 1, 2008; "China Persists in Long-term Friendship with France, Top Legislator Says," XH, Apr. 20, 2009. There has been no confirmation of these statements in Western media.

Exile leaders, organizations, and “Tibet supporters” almost all agree that Tibet was independent or not part of China. The Dalai Lama’s representative has stated that “Tibet has never been part of China.”³⁸³ The largest exile organization, the Tibetan Youth Congress, holds that “Tibet has always been independent of China.”³⁸⁴ A leader of the Rashtryia Swayamsevak Sangh (RSS), the five-million-member, pro-Tibet independence, Hindu nationalist organization that has been characterized as “possibly the most successful fascist movement in any contemporary democracy,”³⁸⁵ has put it that “Tibet was never part of China, which is an imperialistic nation.”³⁸⁶

The exiles and supporters, in dismissing opposing arguments on independence as propaganda, regardless of the evidence, have adopted a stance of Pres. George H.W. Bush. After a US ship shot down an Iranian civilian airliner, killing 290 people, Bush told a 1988 campaign rally, “I will never apologize for the United States of America – I don’t care what the facts are.”³⁸⁷ They have constituted themselves a closed circle of like-minded people. Studies show that political discourse confined to people of one persuasion becomes more homogenous and extreme.³⁸⁸ They also show that exposure to political misinformation continues to influence people’s thinking even after it is debunked and, among conservatives, debunking leads to increased acceptance of political misinformation, as they formulate mental arguments in support of debunked misinformation that they have come to see as supporting their political worldview.³⁸⁹

Tibetan exiles and their supporters are thus unlikely to be open to changing their position on Tibet’s “right to independence,” although the possibility cannot be excluded, as political positions in émigré communities sometimes change when the futility of a prior position becomes apparent. In 2003, 61% of Cuban émigrés in the US favored continuation of the US embargo against Cuba. By 2009, 42% had that position. The head of an organization that polls Cuban-Americans, commenting on the change, stated “We’re at the end of a 50-year stalemate period, calling for a new dawn on US-Cuba relations.”³⁹⁰ In any case, the large number of people throughout the world who have only been exposed to exile and “Tibet supporter” arguments about Tibet independence may be open to an alternative view. If the Dalai Lama decides an accommodation with China is indeed imperative because China is unlikely to collapse,³⁹¹ he may become willing to relent on the propositions that Tibet was always independent and has a right to independence and may agree that it is legitimately part of China. Tibetan exile leaders, however, often grasp at any

³⁸³ “Dalai Lama’s Envoy in Russia Urges Opposition to Beijing’s Olympic Bid,” Ekho Moskvyy Radio (Moscow), July 11, 2001, in BBCWM, July 14, 2001.

³⁸⁴ Tom Carter, “Group Grows Impatient with Dalai Lama,” *Washington Times*, May 9, 1998.

³⁸⁵ Martha Nussbaum, *The Clash within Democracy: Religious Violence and India’s Future* (Cambridge: Harvard, 2007):155.

³⁸⁶ “Tibet Tops Agenda in India-China Talks,” *Guardian Unlimited* (UK), Sept. 18, 2008.

³⁸⁷ “High Stakes in New Orleans,” *Newsweek*, Aug. 22, 1988.

³⁸⁸ See David Schkade, et al., “What Happened on Deliberation Day,” *California Law Review* 95(3) (2007):915-940 (separate deliberations among liberals made them more liberal; separate deliberations among conservatives made them more conservative).

³⁸⁹ Shankar Vedantam, “The Power of Political Misinformation,” WP, Sept. 15, 2008.

³⁹⁰ Damien Cave, “Cuban-Americans are Ready for New Era in Relations,” NYT, Apr. 21, 1909.

³⁹¹ The most recent collapse notion is based on unemployment created by the international economic crisis. Analysts have largely concluded however that “fears of social unrest caused by unemployed migrants have been greatly exaggerated,” because most laid-off migrants have ended up finding employment again. Tom Miller and Arthur Kroeber, “Chinese Resilience,” FT, Apr. 22, 2009.

prediction of China's collapse, in part due to their limited knowledge of China.³⁹² Chinese officials are in turn convinced that Tibet exile leaders hope for a collapse.³⁹³

The assertion that Tibet was always independent is combined with claims that it is an occupied country or colony. Although without the power to recognize states, the US Congress and European Parliament have called Tibet an "occupied country" and the TGIE Tibet's legitimate government.³⁹⁴ China's government has noted that "If Tibet was a colony of China and an 'occupied' nation . . . it would enjoy sovereignty of its own and the right to gain independence in the future, according to international law. This would in fact deny China's sovereignty over Tibet . . ." ³⁹⁵ Chinese leaders consider the claim that Tibet was always independent and has a right to independence as an assertion that Tibet should not be part of China. Thus, even if the Dalai Lama's disavowal of independence is credited, the Chinese government will talk to, but not negotiate with him, because he does not recognize Tibet as *legitimately* part of China. That position has some commonality with how issues of legitimacy cause Israel (and other states) to refuse to negotiate with Hamas because it regards Israel as merely "the Zionist occupier" and does not formally recognize its legitimacy as a state.³⁹⁶

In 1998, US President Bill Clinton stated "I agree that Tibet is part of China and I can understand why the acknowledgment of that would be a precondition of dialogue with the Dalai Lama."³⁹⁷ Only the pronouncement of Tibet as an inalienable (and thus legitimate) part of China will convince its leaders that the Dalai Lama has abandoned any claim to Tibet independence. Such a statement would implicitly acknowledge that at least a reasonable argument can be made that Tibet was not a state or that even if it had been, whatever "right" to independence existed has been definitively extinguished.

Those who are convinced Tibet was a state may come to recognize that superficial indicators, such as currencies, stamps, and passports, are found as well among pseudo-states and local governments. They may also come to realize that Tibet did not meet international law criteria for statehood. They may still be convinced however that Tibet was independent, even if no states or the UN deemed it as such, because Tibet's government from 1913-1951 operated without interference by the weak Chinese central government. Tibet thus was state because it seemed to be one. As the saying goes, "if it walks like a duck and quacks like a duck, it's a duck."

The argument that Tibet was independent because it acted like a state is analogous to saying that a person who lacks a medical license, but hangs out a shingle and takes on patients, is a doctor. Yet even if an unlicensed practitioner "quacks" like a doctor

³⁹² Lobsang Wangyal, an exile journalist in Dharamsala, has remarked, "I don't think people here have any idea what China today is like." Joshua Kurlantzick, "Losing Lhasa," *New Republic*, Dec. 25 2008.

³⁹³ "China Says Dalai Lama Trying to Blacken its Name," Reuters, May 6, 2008.

³⁹⁴ "Tibet Flag to be Hoisted in Vilnius," Baltic News Service, Mar. 9, 2004.

³⁹⁵ "Ulterior Motives Behind Dalai's 'Memorandum,'" *China Daily* (CD), Nov. 22, 2008.

³⁹⁶ "Palestinians, Israelis Debate Peace Proposals at UN," AP, Apr. 26, 2007; "Palestinian Chief Negotiator, Hamas Official Comment on Israel Exit Polls," Al-Jazeera, Feb. 10, 2009, in BBC/WM, Feb. 11, 2009.

³⁹⁷ William Clinton, "News Conference with President Jiang Zemin of China," *FDCH Political Transcripts*, June 27, 1998. The UK government did not require the Irish Republican Army to accept that Northern Ireland is legitimately part of the UK before negotiating with it. Jonathan Powell, "No Peace with Process," *New Statesman*, Apr. 13, 2009. The IRA, however, did not have the backing of powerful states -- or any states for that matter -- and represented no existential threat to Britain.

by treating ailments, he or she is still a “quack,” who is more likely to compound than cure illnesses.³⁹⁸ Only state recognition indicates that a medical practitioner is a bona-fide physician. Due to state incapacity to police the provision of medical services, especially at the margins (e.g. cosmetic surgery), a pseudo-doctor may practice for decades; yet if he is caught, he cannot later emerge from prison and claim that the experience he garnered in his stint of unauthorized practice qualifies him to again provide medical services. Tibet statehood advocates do just that: they contend that even if the long imperial presence precludes a claim of Tibet independence during the Qing, the subsequent period in which China’s government could not exercise control in Tibet allows for a claim of statehood; in short, if the authorities cannot catch someone practicing medicine without a license, that person becomes a doctor.

Like those who engage in the unlicensed practice of medicine, Tibet independence advocates do so without heed of the consequences. Many recognize that their goal can only be realized if China collapses, like the former Soviet Union and Yugoslavia in the 1990s.³⁹⁹ Then and at the outset of the present decade, many US writers both predicted and desired China’s collapse: the political scientist Jack Goldstone prognosticated in 1995 that “We can expect a terminal crisis in China in the next 10 to 15 years,”⁴⁰⁰ while the lawyer Gordon Chang averred in 2001 that China would collapse “within the decade.”⁴⁰¹ Despite the likely failure of such soon past-the-expiration-date predictions, many “Tibet supporters” still hope China’s collapse will allow for a “Free Tibet.”⁴⁰² The Dalai Lama’s opposition to pronouncing Tibet an inalienable part of China may rest on his belief that “the Chinese Communists are also passing through a desperate situation”⁴⁰³ and that change for Tibet can be a “sudden result of what has been building for years,” i.e. that China may suddenly collapse.⁴⁰⁴

The last time China fell apart, its disintegration lasted four decades (1910s-1940s) and tens of millions of people lost their lives in the chaos, an outcome not mentioned by those who look forward to another collapse. The Soviet and Yugoslav breakups’ deadly consequences are also often ignored. In the ex-Soviet Union, 100,000 died in Tajikistan and 100,000 in Chechnya, 30,000 in Nagorno-Karabakh, 10,000-30,000 in Abkhazia, 1,000-plus in South Ossetia, and hundreds in Transnistria. In the former Yugoslavia, 100,000-250,000 died in Bosnia, 20,000 in Croatia and 10,000 in

³⁹⁸ Cases involving the felonious practice of medicine without a license are legion. See, e.g., “Northern Ky. Man Indicted for Posing as Doctor,” AP, June 24, 2008.

³⁹⁹ See, e.g., Jamyang Norbu, “Rangzen: the Case for Independent Tibet,” <http://www.tibet-cafe.net/eu/content/view/1237/>. Scholars have also reached the conclusion that Tibet can only become independent if China collapses. Zhu Yuchao and Dongyan Blachford, “China’s Fate as a Multinational State: a Preliminary Assessment,” *Journal of Contemporary China* 15:47 (2006):329-348 (348). For a summary of related viewpoints, see Barry Sautman, “China’s Strategic Vulnerability to Minority Separatism in Tibet,” *Asian Affairs* 87:32 (2005): 87-118(95).

⁴⁰⁰ Jack A. Goldstone, “The Coming Chinese Collapse,” *Foreign Policy* no. 99 (1995):35-52.

⁴⁰¹ Gordon Chang, *The Coming Collapse of China* (New York: Random House, 2001).

⁴⁰² See, e.g. John Derbyshire, “From Tibet to Chicago,” *National Review* (Mar. 17, 2008)(if China falls into a state of disintegration, “it will leave the Chinese too preoccupied with their own affairs to bother about their “near abroad,” at least for a few decades” and Tibet will become independent). Chinese government organs have stated that there are some people “in international society” who hope that China collapses so that Tibet can become independent. “No Compromise, *Seven Days* (UAE), May 8, 2008 (quoting *Tibet Daily*, s.d.).

⁴⁰³ “His Holiness the Dalai Lama Meets Tibetans, Mongolians and Himalayan Buddhists,” Central Tibetan Administration, Apr. 26, 2009, in WTNN, Apr. 27, 2009.

⁴⁰⁴ Holly Morris, “Inside the Paradoxes of the Dalai Lama,” IHT, Apr. 5, 2008.

Kosovo.⁴⁰⁵ Other areas also suffered: rapid privatization in Russia, Kazakhstan, and the Baltic republics increased male death rates by 42% in the early-mid 1990s.⁴⁰⁶

Deaths from a collapse of the much more populous Chinese state would likely number many times those in the ex-Soviet Union and Yugoslavia and a high proportion would probably be in peripheral areas such as Tibet. The results for an independent Tibet, in the wake of a collapse of China, would probably be no less violent than for breakaways elsewhere. After the Somali government collapsed in 1991, not only did the pseudo-state of Somaliland proclaim its independence, but another area of northern Somalia, Puntland, declared itself an autonomous area in 1998. It has its own flag, coat of arms, etc. Apart from becoming famous for cooperating at times with the Somali pirates now preying on shipping in the Indian Ocean, Puntland's government has engaged in sporadic fighting with Somaliland over the latter's Sool and Sanaag regions, which Puntland claims based on "ethnicity" -- actually clan differences, as 99% of Somalia's population is Somali -- and the control of mineral rights. After Somaliland/Puntland armed clashes in 2007, Sanaag's leaders declared their own "state" (Maakhir). Puntland eventually recaptured all of Sanaag; meanwhile Sool, which Puntland originally had in its grasp, slipped away, leading to more fighting between Somaliland and Puntland in 2008.⁴⁰⁷

Another example involves Bosnia. The prime minister of that country's Serb entity Republika Srpska has since 2006 sought independence by "blocking state institutions from functioning and attempting to take state-level competencies for his entity, while attempting to claim attributes of sovereignty. . ." Bosnia's breakup would plunge it back into violence, as its government has said it will use force to halt secession.⁴⁰⁸

If China were to collapse, its Tibetan areas, with long histories of "kingdoms" and "principalities" that fought both each other and non-Tibetan neighbors, might end up like Somaliland, Puntland, Sanaag and Sool, devolving from a pseudo-state into warring pseudo-statelets. India may occupy Tibet in order to restore order or to gain a forward position vis-à-vis China, just as Ethiopia invaded Somalia in 2006-2008.

⁴⁰⁵ "Ten Years of Peace-Building in Tajikistan Focus of OSCE Magazine, *UzReport*, June 26, 2007; "Putin's Heroes," *Economist*, Dec. 3, 2005 (Chechnya); Fred Weir, "New Push to Resolve After-Effects of USSR's Forgotten War," CSM, Nov. 14, 2006 (Nagorno-Karabakh); "Georgia Quits 1994 Moscow Ceasefire Agreement," Aug. 30, 2008 RIA Novosti (Abkhazia); Thomas de Waal, "Civilians Pay for Politicians' Errors in South Ossetia," *The Monitor*; Aug. 9, 2008; "Transnistria, A Thorn in Europe's Side," *European Report* no. 3516, Apr. 23, 2008; "Background Notes: Bosnia and Herzegovina," *State Department Documents and Publications* (01/09), Jan. 15, 2009; Bob Macdonald, "Milosevic Still a Threat to Serbia," *Toronto Sun*, Oct. 8, 2000 (Bosnia, Croatia); William Finnigan, "The Countdown: the Disputed Region Gears Up to Declare Independence," *New Yorker*, Oct. 15, 2007 (Kosovo).

⁴⁰⁶ David Stuckler, et al., Mass Privatisation and the Post-Communist Mortality Crisis: A Cross-National Analysis," *Lancet* 373: 961 (Jan. 2009):399-407.

⁴⁰⁷ "Regions and Territories: Puntland," BBC, Dec. 4, 2008, http://news/bbc.co.uk/2/hi/africa/country_profiles/4276288.stm; "Puntland's Control over Parts of Somaliland," *Somaliland Times*, Feb. 1, 2006; Dr. Muhammad Shamsaddin Megalommatis, "Somaliland and Puntland in War, as Moderate Leader Rises in Somali South," *American Chronicle*, Sept. 20, 2007.

⁴⁰⁸ James Lyon, "Halting the Downward Spiral," IHT, Feb. 25, 2009.

Alternatively, if Tibet is regarded as a pseudo-state, all claims that it was invaded and occupied fall away. A state cannot invade and occupy territory that is part of it,⁴⁰⁹ despite secessionists' invariable claims that when a legitimate state's armies come to reclaim breakaway territory they are "invaders"; e.g. the assertion by partisans of the Confederacy that the US Civil War was "The War of Northern Aggression."⁴¹⁰ While the threat or use of force against the territorial integrity or political independence of any state is prohibited under UN Charter 2(4), the taking of territory which the prior holder held lawfully can be distinguished from taking territory it held unlawfully.⁴¹¹ International law moreover gives states the right to suppress secession, following the principle that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."⁴¹² The constitutions of most states have also deeply embedded this right. As a principal framer of the US Constitution, James Madison commented, it would be great folly to "oppose constitutional barriers to the impulse of [the country's] self-preservation."⁴¹³

If it is acknowledged that China has had a reasonable claim to Tibet as legitimately part of its territory and that ethnic groups and parts of states do not have a right to independence, then attempts at secession had no legal effect and Tibet was a pseudo-state. The way then becomes clear for the Dalai Lama to accept the pre-condition for negotiations, that he state that Tibet is an alienable part of China, something he can do even without explicitly acknowledging that Tibet was not independent in the decades before 1951.⁴¹⁴ Provided that the Chinese government then makes good on its pledge to enter into negotiations with him and does so not just about the Dalai Lama's future, but about matters he has said are most important to him, i.e. religion and culture in Tibet,⁴¹⁵ the threshold for resolving the Tibet Question will have been attained.

⁴⁰⁹ As the Azeri foreign minister once remarked concerning Nagorno-Karabakh, "A sovereign state cannot occupy its own territory." "No State Can Occupy its Own Territory," *Nezavisimaya Gazeta*, Nov. 12, 1993, in *Russian Press Digest*, Nov. 12, 1993.

⁴¹⁰ See, e.g., Gordon Mellish, *Could the South have Won the War of Northern Aggression?* (Victoria, BC: Trafford, 2006).

⁴¹¹ Stephen Schwebel, "What Weight to Conquest?" *American Journal of International Law* 64 (1970):344-346.

⁴¹² "Declaration on the Granting of Independence to Colonial Countries and Peoples," G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66-67, U.N. Doc. A/4684 (1960), para. 6.

⁴¹³ *Federalist Paper* 41, quoted in Daniel Farber, *Lincoln's Constitution*. Chicago: University of Chicago Press, 2003:136.

⁴¹⁴ Such a change of position would not be unprecedented. In 1848, Abraham Lincoln said that any portion of a people may declare independence for whatever territory they inhabit and legitimately suppress those who oppose secession. Speech in House of Representatives, Jan. 12, 1848, in Mario Cuomo and Harold Holzer (eds.), *Lincoln on Democracy* (New York: Fordham University, 2004):35. By the time the Civil War broke out, he had completely renounced that view.

⁴¹⁵ See "Dalai Lama in Slovakia says Tibet Facial Cultural Genocide," SITA, Oct. 16, 2000, in BBC Summary of World Broadcasts, Oct. 18, 2000.