

# **Law, Policy, and Practice on China's Periphery**

Selective adaptation and  
institutional capacity

**Pitman B. Potter**

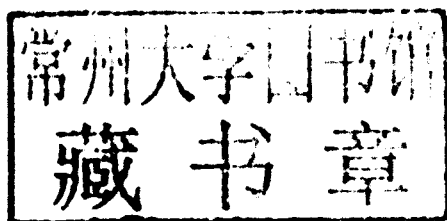


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# Law, Policy, and Practice on China's Periphery

This book examines the Chinese government's policies and practices for relations with the Inner Periphery areas of Tibet, Xinjiang, and Inner Mongolia, and the Outer Periphery areas of Hong Kong and Taiwan, focusing on themes of political authority, socio-cultural relations, and economic development. China's history may be seen as one of managing the geographic periphery surrounding China proper. Successive imperial, republican, and communist governments have struggled to maintain sovereignty over the regions surrounding the great river valleys of China.

The importance of the periphery is no less real today; concerns over national security, access to natural resources, and long-held concerns about relations between Han and other ethnic groups continue to dominate Chinese law, policy, and practice regarding governance in the Inner Periphery regions of Inner Mongolia, Xinjiang, and Tibet. In the Outer Periphery, Beijing sees engagement with the outside world (particularly the West) as inextricably tied to Chinese sovereignty over former foreign colonies of Hong Kong and Taiwan.

Using the case study of national integration to indicate how policies are articulated and implemented through law and political-legal institutions, this book will be of interest to students and scholars of the peripheral regions. It will also appeal to academic and policy communities interested in legal reform in China

**Pitman B. Potter** is Hong Kong Bank Chair in Asian Research at the Institute of Asian Research and Professor of Law at the University of British Columbia, Canada.

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Selective adaptation and institutional capacity  
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**Dedicated to all the peoples of China's periphery,  
that their lives may be filled with dignity and promise.**

# Preface

The geographic periphery surrounding China has historically been a contested domain of relationships around sovereignty, society, and development. As a result, management of the periphery has long been a major priority of the Chinese state. Whether in the course of resisting (or succumbing to) invasions from Inner Asia, pacifying (or accommodating) pirates in the South China Sea, or managing relations with foreigners from Japan, Europe, and North America, successive imperial, republican, and communist governments have struggled to maintain control over the regions surrounding the great river valleys of China proper. The importance of the periphery is no less real today. Along the “Inner Periphery” astride China’s inland borders, concerns over national security, relations between Han and other ethnic groups (referred to in official Chinese nomenclature as “minority nationalities”), and the challenge of economic development continue to dominate Chinese perspectives on so-called “nationality autonomy regions” such as Inner Mongolia, Xinjiang, and Tibet.

China’s approach to governance in the Inner Periphery invites questions about relations with the Outer Periphery—particularly Hong Kong and Taiwan. The two peripheries have generally been considered quite separately in much conventional political thinking. An anecdotal (and possibly apocryphal) story tells of former Politburo member Chen Yonggui speaking in 1980 and rejecting outright (*juedui bu kenengdi*) any suggestion that the “one country–two systems” approach being prepared for Hong Kong in the late 1980s might apply to Tibet. Instead, along the maritime boundaries of the “Outer Periphery,” the People’s Republic of China (PRC) government sees engagement with the outside world (particularly the West) as tied closely with issues of Chinese sovereignty over former foreign colonies in Hong Kong, Taiwan, and Macao. Protracted negotiations with Britain and Portugal over the return of Hong Kong and Macao, and with the government of Taiwan on reunification, reflect influences of China’s policies and practices on local governance in the Inner Periphery and elsewhere. Made distinct by virtue of historical and contemporary circumstances, the Outer Periphery presents particular challenges for China’s projects of national sovereignty and integration. Yet the one country–two systems approach to the Outer Periphery

has itself become more diversified. Even as it prepared for Hong Kong's reversion to PRC sovereignty, for example, the central government was preparing to offer Taipei much more autonomy that had been allowed for Hong Kong. Such diversity invites questions about links with policies of governance in the Inner Periphery—encouraged in no small part by the central government's linking of relations with the Dalai Lama with his acceptance of PRC sovereignty over Taiwan.

While the central government seems willing to tailor its relations with the periphery according to the particularities of local conditions, it still views the Inner and Outer Peripheries as embodying unified sets of issues. Indeed the emerging field of studies on the “periphery” (*“bianjiang,”* or *“bianyuan”*) in China proper and on Taiwan suggests an academic and policy perspective that recognizes the fundamental similarity of issues, discourses, and challenges that the Inner and Outer Peripheries present (Xie 1999; Zhang 2005).

China's regulation of its Inner and Outer Peripheries has particular academic and policy significance. Security concerns have driven China to forge political alliances in Central and Southeast Asia, and to pursue vigorous programs of political authority and control. Socio-cultural tensions in the Inner Periphery have driven China to pursue conflicted policies of control and accommodation, while similar conflicts are evident in the Outer Periphery as local communities remain skeptical about China's governance. Economic relations in the Inner Periphery are dominated by development projects aimed at satisfying China's expanding demands for energy and other requirements for growth while also pacifying local minorities, whereas China's economic interaction with the Outer Periphery is an integral component of interaction with the global political economy.

China's management of the periphery is also a measure of the character of the PRC legal system, as policies and practice come increasingly to be explained and justified by reference to legalization (*fazhihua*). As with other aspects of the PRC legal system, the legal regime for relations with the periphery reflects central policy priorities conceived through organs of Party (CPC) and state leadership, which are then expressed and implemented through political-legal texts and organizations. Guided by Party policies, the PRC Constitution provides a general legal framework that supports political-legal regimes for managing the Inner Periphery (relying primarily on the Law on Autonomy in Nationality Areas, and ancillary laws and regulations) and the Outer Periphery (relying mainly on the Special Administrative Region Basic Laws for Hong Kong and Macao and the Anti-Secession Law for Taiwan). Similarly with the expanded application of law to China's economic reforms are, broadly, the “legalization” of China's relations with the periphery is aimed at building legitimacy for central government policies, reforming existing institutional relations, and lending predictability to socio-economic and political behavior.

The legal system is also intended as an instrument of control. Just as the famed Chinese porcelain artists of Jingdezhen who designed the

“contending colors” (*doucai*) style of decoration used lines of cobalt blue to confine other hues painted onto various ceramic shapes (Scott 1993; Cort and Stuart 1993), so too does China’s legal system seek to impose boundaries constraining China’s multiple nationality groups and regional political communities. Thus, the legal system is not intended as a restraint on the powers of the Party/state but rather as an instrument of control by the Party/state over China’s people (Lubman 1999). And to the extent that the character of a legal system can be determined based on its response to sensitive political issues, China’s law and policy on governance in the periphery may usefully be taken as a measure of the basic tenets and implications of China’s socialist legal system generally.

This requires careful scrutiny of political–legal texts on policy priorities, imperatives of practice and implementation, and contexts for institutional behavior. For such texts are much more than simply wooden expressions of government rhetoric. Rather the texts of laws and regulations, administrative orders, governmental notices, and the like reveal the outcome of tendentious politics and decision-making on issues of political authority, socio-cultural relations, and economic development. Official documents illuminate the normative perspectives and institutional relationships that inform interpretation and implementation of policy and law. Revisions to legal and political texts reveal the outcome of political and policy conflict over responses to changing conditions and emerging challenges. To the extent that formal texts serve as benchmarks for organizational behavior, they are invaluable sources for normative and organizational analysis of China’s ideals and practices of governance.

This study began amidst a confusing array of observations and ideas emerging over the past few decades. During my residence in Beijing in the 1980s, my impressions about the unruly behavior of migrant Uighurs seemed in conflict with my recollections of the grace and dignity of Turks and Persians from my time in the mid-East as a youth. As a doctoral student in Hong Kong and China in the early 1980s, I was struck by conflicts between international news reporting and scholarship on problems of local development in Tibet, Xinjiang, and Inner Mongolia, and the official imagery of local pastoral bliss and peaceful development. As a witness to the tragedy of Tiananmen in 1989, I noted many parallels and contradictions with the unrest that broke out in Tibet in 1989 and Xinjiang in 1990–1991. And as a frequent visitor to Hong Kong and Taiwan I have been struck repeatedly by the apparent dissonance between Beijing’s continued insistence on China’s sovereignty over Taiwan despite the operational realities of Taiwan’s independence and by the legal and political tensions around the negotiated return of Hong Kong and Macao to Mainland authority. Yet, mindful of the groundbreaking work done by other scholars examining specific areas of China’s periphery, I have long been content to remain an interested observer and to confine my work on China to areas of commercial law and human rights.

However, encouraged by colleagues Tim Cheek, Diana Lary, and Daniel Overmyer to work on a variety of issues of local law and policy in China's peripheries, I have gradually steeled myself to stand on the shoulders of giants and attempt a study that examines China's relations with the periphery as a case study of the sustainability of China's socialist rule of law in the context of national integration. Drawing on a range of Chinese and English language archival materials and observations during the course of field visits during 2002–7, I have tried to achieve an understanding of the normative and operational challenges facing China's governance in the periphery. I could hardly aspire to challenge or displace the wonderful work of scholars focused on local knowledge in the periphery itself. Instead I have attempted to build on that knowledge informed by perspectives on Selective Adaptation and Institutional Capacity drawn from my work on other areas of Chinese law and policy.

As a case study in national integration, this book examines the Chinese government's policies and practices for relations with the Inner Periphery areas of Tibet, Xinjiang, and Inner Mongolia, and the Outer Periphery areas of Hong Kong and Taiwan focusing on themes of political authority, socio-cultural relations, and economic development. Chapter 1 provides an overview of China's relations with the Inner and Outer Peripheries, and explains the analytical approach of selective adaptation and institutional capacity used to explain government policies and practices. Chapter 2 reviews the political relationship between Beijing and the Inner Periphery, as articulated in national and local laws, regulations, and political directives on governance. Chapter 3 examines socio-cultural relations in the Inner Periphery, with particular attention to policies on nationalities and religion. Chapter 4 examines the PRC economic policies in the Inner Periphery, focusing on the Western Development Program. Chapter 5 addresses the implications of China's governance of the Inner Periphery for relations with the Outer Periphery areas of Hong Kong and Taiwan. The Conclusion summarizes findings about China's relations with the periphery and suggests longer-term questions and responses.

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helped immensely in my efforts to strengthen the work. To other valued colleagues who have shared of their time and insight, I extend my profound thanks. Naturally, despite the best efforts of those who tried to help improve this work, errors and omissions no doubt remain, for which I alone remain responsible.

Pitman B. Potter  
Vancouver  
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# 1 Overview<sup>1</sup>

China exists geographically and conceptually at the center of an ever-widening series of concentric borderlands. The traditional nomenclature of the “Central Kingdom” applied not only to distinguish the China of the Han ethnic nationality group from external principalities, but also to differentiate non-Han groupings within the boundaries of the Chinese empire. Whether we consider the ancient Qin Dynasty with its capital of Chang’an (now Xian) at the bend of the Yellow River or the People’s Republic whose heart is Beijing, the North China Plain has served for millennia as both the physical and the spiritual center of China. Although southern China has given rise to numerous cultural achievements in painting, poetry, and other areas, for most of the imperial and modern periods, China’s cultural center rested along the course of the Yellow River. And although important dynasties such as the Southern Song and early Ming, as well as the Republic of China were centered or began in the South, this tended to reflect particularities of history—in particular, the extent of intrusion into China proper by non-Han groups through the Yuan and Qing dynasties. Indeed, the retreat of the Southern Song from Mongol power, the circumstances leading Zhu Yuanzhang to defeat the weakened Yuan Dynasty of the Mongols, and later the capacity of Sun Yat-sen and General Yuan Shikai to lead resistance to Manchu-led Qing each reflected particular conditions around Chinese reactions to non-Han control of the North China Plain and the extent to which during periods of dynastic weakness southern China remained freer of control by the non-Han intruders. But these exceptions also suggest how deeply embedded in China’s socio-cultural history are tensions with outlying peoples living beyond the domain of Han China.

Looking outward, China’s cultural perspective was soon confronted by societies whose structures, belief systems, and behavior conflicted fundamentally with those of the Han. Moving westward, the Chinese came into conflict with Central Asian cultures of the Tarim Basin, whose nomadism and religiosity contrasted with the secular urbanism of the Han (Perdue 2005; Millward and Tursun 2004). Moving north, the Chinese confronted the pastoral societies of the Gobi, with similarly conflicted results (Bulag 2004; Reardon-Anderson 2005). While some of these contacts (especially in the Tarim Basin)



were violent, even when relatively peaceful, relentless intrusion from China resulted in displacement and marginalization of local people. In its relations with the borderlands, the Chinese state (whether Imperial, Republican, or Socialist) tended to view local denizens with a mixture of contempt and fear. As the archetypal “other,” the peoples of these peripheral regions were considered both inferior and challenging, unequal to the cultural superiority of the Han but also militarily powerful and threatening. Chinese dynasties sought to suppress those barbarians (*yi*, meaning “not yet Sinicized”) who ventured too close to the Han homeland, to dominate peaceful border areas through settlement and military garrison, and to convert societies to the benefits of Han culture (Fairbank 1953: 7–10). Thus, through much of Chinese history, management of the periphery has loomed large as an imperative of governance. Even the foreign dynasties of the Yuan and Qing were not exempt from such attitudes, reflecting both the extent of their Sinicization and their appetite for conquest of neighboring peoples (Milward 2007).

Today, China’s relations with its borderlands continue to reflect a combination of cultural superiority and deep-seated unease, standing against the context of the policy imperatives of national integration. The concept of the “frontier” (*bianjiang*) wields significant power not only on China’s sense of itself and its relations with its neighbors, but also with the communities that live in the frontier areas that comprise China’s boundaries (Ma 2005). The periphery of China may be thought of as comprising those regions surrounding China proper that offer both shelter from and interaction with systems, cultures, and peoples outside. China’s “Inner Periphery” borderlands have for millennia separated China proper from the pastoral civilizations of inner Asia, while the Outer Periphery has been a maritime boundary against other states and empires in Asia and beyond.

In the Inner Periphery, areas such as Tibet, Xinjiang, and Inner Mongolia constitute administrative components of the People’s Republic of China (PRC) state. While questions about sovereignty continue to be addressed by historians (e.g., Smith 2008; Millward and Tursun 2004; Millward and Perdue 2004) and legal specialists (e.g., Sorensen and Phillips 2004; ICLT 1997), China’s control over the Inner Periphery remains a political reality. Governance of minority nationality “Autonomous Regions” has long been a central feature of PRC policy, and is presented as an improvement on the policies of domination associated with Imperial China and to some extent the nationalist period (SCIO 1999, 2004a). Despite their formal designations, however, these regions often enjoy less actual autonomy than is conferred by the Center on the Chinese provinces. National integration of minority nationality areas has run the gamut from relatively benign accommodation to military control, but is unavoidably colored by the specter of Han chauvinism (*Da Hanzu zhuyi*)—either as an unfortunate feudal remnant to be gradually educated away or as a subversive complement to socialist transformation that works to displace local socio-cultural arrangements. Thus, China’s national integration priorities in Tibet, Xinjiang, and Inner Mongolia have included policies of secularization,