

# National Identity in Taiwan: A Doctrinal Analysis through the Lens of Democratism

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## Abstract

This special report is a doctrinal analysis of the Taiwanese national identity. It argues that democracy is a touchstone separating the Republic of China from the People's Republic of China, and therefore multiple strains of the Chinese identity should be recognized because there are *de facto* two China(s) in the world. It is a “false dichotomy” to sweep all Taiwanese citizens with Chinese identity into the same political group, as it assumes homogeneity in all non-Taiwan independentists. In fact, at least three strains of national identity exist in Taiwan: “China, whatever it refers to”, “Taiwan,” and the “Republic of China.”

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## Keywords

Democracy – One China Policy – Taiwanese National Identity – Taiwan's Statehood – Taiwanese Self-Identification

## I Introduction

The multiplicity of Taiwanese national identity is intractable.<sup>1</sup> “Taiwan’s official name is the Republic of China”<sup>2</sup> and “there is no such independent country named Taiwan.”<sup>3</sup> Vice-Chief Justice Su Yeong-Chin observed that Taiwan’s national identity devolved from great nation (Republic of China) to minor nation (Republic of China on Taiwan)<sup>4</sup> owing to the secession of mainland China from the Republic of China, and it was characterized by President Lee Teng-Hui as a hybrid identity of Chinese and Taiwanese,<sup>5</sup> for Taiwan was like China’s Alsace-Lorraine.<sup>6</sup> The dynamic between the Republic of China and Taiwan as captured in Councillor Guo Guo-Ji’s joke is: “When the Japanese were defeated, Taiwan returned to the arms of [our] fatherland; [however,] when the Chinese mainland was taken over, [our] fatherland approached the arms of Taiwan.”<sup>7</sup>

Taiwanese national identity is dichotomized into “Chinese” and “Taiwanese” for this historical reason, and most academics play off such a dichotomy in their writings,<sup>8</sup> with Yi-Huah Jiang being a rare exception.<sup>9</sup> However, democracy has become a defining trait<sup>10</sup> separating the Republic of China from the

1 See generally Dafydd Fell, *Government and Politics in Taiwan* 133–50 (2012).

2 Ann Kerns, *Seven Wonders of Architecture* 66 (2010).

3 David K.C. Huang, *Judicial Supremacy in Taiwan: Strategic Models and the Judicial Yuan, 1990–1999*, at 40 (2016).

4 Su Yeong-Chin, *Zou Xiang Xian Zheng Zhu Yi [The Step Towards Constitutionalism]* 406–11 (1994).

5 Lee Teng-Hui, *Tai Wan De Zhu Zhang [Taiwan’s Declaration]* 76–79 (1999).

6 Huang, *supra* note 3, at 349–52.

7 Chen Jin-Chang, *Jiang Zhong Zheng Qian Tai Ji [The Generalissimo’s Withdrawal to Taiwan]* 190 (2005) (author’s translation).

8 E.g., Melissa J. Brown, *Is Taiwanese Chinese?: The Impact of Culture, Power, and Migration on Changing Identities* 1–248 (2004); Fell, *supra* note 1, at 133–50; Chien-Jung Hsu, *The Construction of National Identity in Taiwan’s Media, 1896–2012*, at 119–24 (2014).

9 See generally Yi-Huah Jiang, “Taiwan’s National Identity and Cross-Strait Relations”, in *Taiwan and China: Fitful Embrace* 19 (Lowell Dittmer ed, 2017).

10 If ‘socialism with Chinese characteristics’ really makes sense, liberal democracy ought to be a ‘political system with English characteristics’; some may find humour in that.

People's Republic of China. The Chinese identity should therefore have a second strain, and it would be neglectfully reductive to reidentify citizens from the democratized "China" as "Taiwanese" and then rename the country "Taiwan." The classical dichotomy is due for a reappraisal because in fact there are now at least three strains of national identity in Taiwan: "China, whatever it refers to," "Taiwan" and the "Republic of China."

## II Theoretical Insights

When the junior author of this special report was a Ph.D. candidate in the field of constitutional law, he was advised by his supervisor to avoid using the term "West"<sup>11</sup> in legal-political writing. The supervisor, Alexander Christoph Fischer<sup>12</sup> from Baden,<sup>13</sup> posited that before "Western" civilisation is defined, Germany cannot be categorized as a "Western" country. He argued that the German legal-political tradition differs from that of Great Britain,<sup>14</sup> and the jury is still out on which country should represent "Western" civilisation. He further opined that if Great Britain represented the "West," that would rule out Germany as a "Western" country and *vice versa*.

Applying this thinking to China would precipitate a national identity conundrum.<sup>15</sup> What do China (as a legal person under international law)<sup>16</sup> and Chinese civilisation mean? If the Chinese civilization is equivalent to the Han civilization,<sup>17</sup> then the Qing Empire, the last empire which ruled mainland China between 1644 and 1912, was unequivocally not "China."<sup>18</sup> The Qing

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Compare Constitution of P.R.C. art. 1(2) (1982/2018), with Bill of Rights (1689), and Act of Settlement (1701).

11 See generally Peter N. Stearns, *Western Civilization in World History* 1–6 (2003).

12 B.A. (Londiniensis), M.A. (Heidelberg), LL.M. (Londiniensis); Ph.D. (Heidelberg).

13 See generally Janet Robinson & Joe Robinson, *Handbook of Imperial Germany* 80–82 (2009).

14 See generally David K.C. Huang & Nigel N.T. Li, "From Fukoku Kyohei to Fu-Guo-Qiang-Bing: A Comparative Analysis of Imperial China and Japan", 8 *Comp. Leg. Hist.* 27, 28–36 (2020).

15 See generally Huang Guang-Xue & Shi Lian-Zhu, eds., *Zhong Guo De Min Zu Shi Be* [China's Recognition of Nationalities] 1–323 (1995).

16 Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.

17 See generally Kevin Carrico, *The Great Han: Race, Nationalism, and Tradition in China Today* 1–218 (2017).

18 See generally Aisin-Gioro Yinzhen, *Da Yi Jue Mi Lu* [Record of Awakening from Delusion about the Cardinal Principle of Loyalty to the Throne] 1.1–1.13 (1729) (Emperor Yongzheng

Empire was founded by the Manchurians in 1616,<sup>19</sup> and they conquered all of China in the late 17th century.<sup>20</sup> If China were conquered by Japan during the Second World War,<sup>21</sup> would the Japanese Empire be identified as China too? If it would be inane to call Japan “China,” why would it be valid to call the Qing Empire “China”? Likewise, would calling the Mongol Empire<sup>22</sup> “China” be justifiable? What is China?

There are *de facto* two China(s) in the world – the nationalist Republic of China – the ROC (Taiwan), founded in 1911 – and the communist People’s Republic of China, the PRC, established in 1949.... [T]he fact [is] that the two China(s) do not presently belong to each other, and those who propagate a One China Policy implicitly acknowledge the presence of opposing views and the reality of two different systems of government. Meanwhile, those who demand a declaration of independence for Taiwan inherently acknowledge the fact that there is no such independent country named Taiwan.<sup>23</sup>

This special report may be rejected for publication because of some perceived political agenda of the authors. However, it tells an uncomfortable truth, that “[t]here are *de facto* two China(s) in the world,”<sup>24</sup> and one of them is customarily called “Taiwan” at present,<sup>25</sup> even though “Taiwan’s official name is the Republic of China.”<sup>26</sup> Furthermore, it was fatuous to push the “One China

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publishing this piece of writing to indicate why he as a “foreign sovereign” was entitled to the throne of China).

- 19 See generally Hsu Cho-Yun, *China: A New Cultural History* 412–500 (Timothy D. Baker, Jr. & Michael S. Duke trans., 2012).
- 20 See generally Hsu Cho-Yun, *Wo Zhe Yu Ta Zhe: Zhong Guo Li Shi Shang De Nei Wai Fen Ji* [*We and They: National Identity in China’s History*] 145–46 (2009) (indicating that the Manchurians considered China a “conquest” but Mongolia and Tibet “siblings” and “allies.” The differentiation was not only political but also institutional.).
- 21 See generally Jay Taylor, *The Generalissimo: Chiang Kai-Shek and the Struggle for Modern China* 141–335 (2009).
- 22 Cf. Ling Wang, *Tea and Chinese Culture* 32 (2005) (indicating that “[t]he Yuan Dynasty was established by the Mongols, a “foreign” dynasty in the sense that the Mongols were an ethnic minority and non-Han Chinese’).
- 23 Huang, *supra* note 3, at 40.
- 24 *Id.*
- 25 See generally Shih Ming-Te, *Chang Shi: Yi Ge Tai Wan Ren Zui Hao Zhi Dao De Shi* [*Common Sense: Something the Taiwanese People Better Know*] 9–11 (2011).
- 26 Kerns, *supra* note 2, at 66.

Policy”<sup>27</sup> before the founding of the People’s Republic of China in 1949,<sup>28</sup> as the Republic of China was the only “China” and no one would call it “Taiwan.”<sup>29</sup> Today, “[t]here are *de facto* two China(s) in the world,”<sup>30</sup> but one has been forced by the One China Policy not to be *de jure* recognized by the international community.<sup>31</sup> Therefore, when an individual self-identifies as “Chinese,” there is no basis to align the individual’s national identity (and political orientation) with the People’s Republic of China unless compelling evidence is adduced. He or she may self-identify as “Chinese” because what he or she means by China<sup>32</sup> is the Republic of China.

The word “China” is pregnant with meanings because China boasts a confluence of diverse cultures and politics. If the right to freedom of thought, conscience and religion had been respected,<sup>33</sup> there would have been multiple strains of Chinese national identity and the One China Policy would have been reconsidered.<sup>34</sup> There would also have been ample latitude for Taiwanese citizens to identify themselves as Chinese who embrace liberal democracy.<sup>35</sup> When the Republic of China was forced not to be *de jure* recognized internationally, its citizens were *de facto* forced by the world to change their national identity to Taiwanese, because the definition of “Chinese” henceforward belonged to citizens of the People’s Republic of China exclusively.<sup>36</sup> However, when the American Government condemns the People’s Republic of China for trampling on democratic values, it considers Taiwanese “Chinese,” declaring

27 See generally Peter C.Y. Chow, “An Overview on the Dilemma of ‘One China’: Myth Versus Reality”, in *The “One China” Dilemma* 3 (Peter C.Y. Chow ed., 2008).

28 See generally Michael Dillon, *China: A Modern History* 228–55 (2012).

29 See generally Edward L. Dreyer, “The Myth of “One China”, in *The “One China” Dilemma*, *supra* note 27, at 19.

30 Huang, *s supra* note 3, at 40.

31 *E.g.*, Joint Communiqué on the Establishment of Diplomatic Relations (Jan. 1, 1979) (providing that “[t]he Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China”).

32 Compare U.N. Charter art. 1(2), with International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec. 16, 1966, 999 U.N.T.S. 171, and International Covenant on Civil and Political Rights art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

33 G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 18 (Dec. 10, 1948).

34 *Id.* art. 15; *contra* Constitution of P.R.C. pmb. (1982).

35 Cf. “Remarks by Vice President Pence on the Administration’s Policy Toward China” (Oct. 4, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-vice-president-pence-administrations-policy-toward-china/>.

36 Richard C. Bush, *At Cross Purposes: U.S.-Taiwan Relations Since 1942*, at 129 (2004) (indicating that there is “a significant portion of the population who after decades of Kuomintang [KMT] repression subjectively identified themselves politically as Taiwanese, not Chinese”).

that “America will always believe that Taiwan’s embrace of democracy shows a better path for all the Chinese people.”<sup>37</sup> Perplexing inconsistencies abound in the American posture because citizens of the Republic of China sometimes are considered Chinese but sometimes are not. So, what does the international community mean by China?

The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council.<sup>38</sup>

Decides to restore all its rights to the People’s Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.<sup>39</sup>

According to international law,<sup>40</sup> a nation could cease to subsist only by fact.<sup>41</sup> In other words, the Republic of China may cease to subsist only if it perishes (*ipso facto*), and it is neither logical nor legal to eliminate a nation by law (*ipso jure*).<sup>42</sup> Hearing about one’s own demise pronounced by the international community may be the *ne plus ultra* in absurdity.<sup>43</sup> Though the United Nations recognized the subsistence of both the Republic of China<sup>44</sup> and the People’s Republic of China<sup>45</sup> whilst discussing the dual representation proposal for

37 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

38 U.N. Charter art. 23(1).

39 G. A. Res. 2758 (XXVI) (Oct. 25, 1971).

40 Montevideo Convention on the Rights and Duties of States, *supra* note 16, art. 1.

41 Alina Kaczorowska-Ireland, *Public International Law* 212 (2015) (indicating that ‘recognition is a mere formality. States exist as a matter of fact, and the granting of recognition is merely an acknowledgement of that fact’).

42 *See generally id.* at 212–23.

43 *But cf.* Taiwan Aff. Office of the State Council (P.R.C.), “Tai Wan Wen Ti Yu Xin Shi Dai Zhong Guo Tong Yi Shi Ye [Taiwan Question and China’s Reunification in the New Era]”, Aug. 10, 2022, [http://www.gwytb.gov.cn/topone/202208/t20220810\\_12459866.htm](http://www.gwytb.gov.cn/topone/202208/t20220810_12459866.htm).

44 U.N. Charter art. 23(1).

45 G. A. Res. 2758, *supra* note 39.

both China(s), the proposal was vetoed.<sup>46</sup> Both China(s) were recognized by the United Nations as *de facto* nations, but “[t]here was only one Chinese state that was entitled to a seat in the United Nations. To have an additional seat would require as a prior condition the creation of a second Chinese State which would have to apply for membership under the Charter.”<sup>47</sup> So, what does the United Nations mean by China?

We are not decrying the decision of the United Nations General Assembly<sup>48</sup> nor are we plugging a political agenda.<sup>49</sup> However, it is a matter of fact that citizens of the Republic of China are now loath to identify themselves as “Chinese,”<sup>50</sup> and this is because they believe that their Chinese national identity has been denied by the United Nations.<sup>51</sup> Their national identity oscillates between Chinese and Taiwanese,<sup>52</sup> and it appears that democracy has become the identity litmus test.<sup>53</sup> One self-identifies as “Taiwanese only” when one prizes democracy over Chinese cultural identity, and one self-identifies as “Chinese unconditionally” when one relegates democracy to a dispensable role. There are still some who give equal weight to democracy and Chinese cultural identity. They would never turn their backs on their Chinese national identity, and are also unperturbed by the label “Taiwanese” because they see themselves as China’s freemen and, perhaps, patriots of the democratic China, i.e., the Republic of China.

With the benefit of hindsight,<sup>54</sup> the Republic of China is the “China” (or Chinese state)<sup>55</sup> which embraces democracy.<sup>56</sup> The merit of identifying the

46 See generally “Representation of China in the United Nations”, 1971 U.N.Y.B. 126, U.N. Sales No. E.73.L.1.

47 *Id.* at 131.

48 G. A. Res. 2758, *supra* note 39.

49 David K.C. Huang, “The Judiciary of the Republic of China on Taiwan: Its Origin, Jurisprudence and Development”, 3 *Intl. J. Leg. Hist. & Inst.* 390 (2019) (indicating that no one should “deny fact because of political preference”).

50 See generally Shih, *supra* note 25, at 77–79.

51 Compare Fu-Lai Tony Yu, *Social Construction of National Reality: Taiwan, Tibet, and Hong Kong* 62–63 (2020), with Bi-Yu Chang, *Place, Identity and National Imagination in Postwar Taiwan* 24–66 (2015).

52 See generally Yi-Huah Jiang, “Taiwan’s National Identity and Cross-Strait Relations”, in *Taiwan and China: Fitful Embrace* 19 (Lowell Dittmer ed., 2017).

53 Baogang He, *Governing Taiwan and Tibet: Democratic Approaches* 80–87 (2015).

54 When United Nations General Assembly Resolution 2758 was made, the Republic of China did not qualify as a democracy. In this regard, the United Nations is irreproachable because it was choosing between two authoritarian regimes, Scylla and Charybdis. See generally Denny Roy, *Taiwan: A Political History* 55–226 (2003).

55 “Representation of China in the United Nations”, *supra* note 46, at 131.

56 See generally Hungdah Chiu, “Constitutional Development in the Republic of China in Taiwan”, in *In the Shadow of China: Political Developments in Taiwan since 1949*, at 17 (Steve

Republic of China as “China” is that it “shows a better path for all the Chinese people.”<sup>57</sup> But any assertion about the Chinese’s difficulties in embracing democracy<sup>58</sup> should be predicated on the position that the Taiwanese are not Chinese. If the world expects Taiwan to be a beacon of Chinese democracy<sup>59</sup> “for all the Chinese people,”<sup>60</sup> the Taiwanese should be viewed as Chinese who champion liberal democracy<sup>61</sup> first.<sup>62</sup>

Therefore, a reappraisal of the definitions of “China” and “Chinese” is in order. If any pro-democracy Chinese group were categorized as “non-Chinese,” no one could step up and “[show] a better path for all the Chinese people.”<sup>63</sup> And if “communist jackal” were branded on any person who self-identifies as “Chinese” sans evidence, no “Chinese” person would espouse liberal democracy henceforward. Why would the international community distort “China” and “Chinese”?

### III Methodology

This special report is a doctrinal analysis of the issues of national identity in Taiwan. Quantitative analysis would have taken us down the path of ideological labelling, a quagmire we would rather sidestep. Moreover, contemporary quantitative analysis turns on the dichotomy of China versus Taiwan, which alone deserves a separate exploration. Yi-Huah Jiang for the same reason asserted that contemporary quantitative analysis should be interpreted more rigorously.<sup>64</sup> Our contribution, based on the academic disciplines of constitutional and

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Tsang ed., 1997); Tun-Jen Cheng & Chia-Lung Lin, “Taiwan: A Long Decade of Democratic Transition”, in *Driven by Growth: Political Change in the Asia-Pacific Region* 224–54 (James W. Morley ed., 1999).

57 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

58 *E.g.*, Yongnian Zheng, *Discovering Chinese Nationalism in China: Modernization, Identity, and International Relations* 65 (1999).

59 *See generally* Linda Chao & Ramon H. Myers, “The First Chinese Democracy: Political Development of the Republic of China on Taiwan, 1986–1994”, 34 *Asian Surv.* 213 (1994).

60 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

61 *Id.*

62 This logic is simple: No one is wont to say that South Korea’s embrace of democracy shows a better path for all the Chinese people. If the Republic of China (Taiwan) is not ‘China’, what are the differences between Taiwan and South Korea in relation to China?

63 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

64 *See generally* Jiang, *supra* note 52, at 20–27.

international law, is to illuminate the irrationality of the classical dichotomy through interdisciplinary doctrinal analysis.

A person's identity is usually coloured by his or her understanding of history.<sup>65</sup> Whilst assaying the triptych of modern interpretations of Taiwanese history, we refrain from judging any interpretation wrong, much less label any national identity as wrong. The spirit of international law is that no one should judge any national identity,<sup>66</sup> including muffling the supporters of any national identity. Respect for national identity is paramount.

Democracy (*Min-Zhu*) and demo-orientation (*Min-Ben*) differ in concept; the former is mainly procedural and the latter is purely substantial.<sup>67</sup> That is, democracy is a legal-constitutional institution which creates legal rights via democratic procedures for the people to make political decisions, but demo-orientation is at most a political theory which “[persuades] the ... rulers into making decisions *for* the people,”<sup>68</sup> namely that no legal rights would be given to the people against the government.<sup>69</sup> Hence, there should be no doubt that the Government of the Republic of China is democratic, for the citizens clearly possess legal rights of political franchise accorded by the Constitution of the Republic of China.<sup>70</sup> However, this does not mean the quality of democracy in Taiwan at present is satisfactory. As far as we are concerned, it can be unsatisfactory and at times downright disappointing.<sup>71</sup>

#### IV When Chinese Identity Eclipses Democracy

The idea of “unification” is one of the core ideals of Chinese culture, and a treasure of Chinese people.... “[Unification]” had always been about valuing the unity of the nation and the merger of the peoples. This is an idea that had long-term effects on the Chinese culture's institutions,

65 See generally Karina V. Korostelina, *History Education in the Formation of Social Identity: Toward a Culture of Peace* 1–182 (2013).

66 See *supra* note 32.

67 David K.C. Huang & Nigel N.T. Li, “Why China Finds It Difficult to Appreciate Democracy”, 8 *Glob. Constitutionalism* 332 (2019).

68 *Id.* at 333.

69 *Id.* at 344–49.

70 Constitution of R.O.C. art. 17 (1947).

71 *E.g.*, David K.C. Huang, “Act of Ill-Gotten Political Party Assets in Taiwan: A Bill of Attainder in the Name of Transitional Justice”, in *Violent Conflicts, Crisis, State of Emergency, Peacebuilding: Constitutional Problems, Amendments and Interpretation* 181 (Oesten Baller ed., 2019).

behaviors and everyday thinking, ever strengthening the Chinese people's awareness of themselves as a diverse yet unified people, maintaining the continuity of the Chinese identity.<sup>72</sup>

It may be hard for the Chinese to admit that "China was not unified during a considerable time in its history,"<sup>73</sup> and the Chinese desire for unification is merely a cultural preference.<sup>74</sup> However, the desire for China's unification was written into the Additional Articles of the Constitution of the Republic of China in 1991 and the Constitution of the People's Republic of China in 1982, though the ideals promoted by the two China(s) clashed.<sup>75</sup> The Constitutions of both China(s) provide that:

Taiwan is part of the sacred territory of the People's Republic of China. It is the sacred duty of all the Chinese people, including our fellow Chinese in Taiwan, to achieve the great reunification of the motherland.<sup>76</sup>

To meet the requisites of the nation prior to national unification, the following articles of the ROC Constitution are added or amended to the ROC Constitution in accordance with Article 27, Paragraph 1, Item 3; and Article 174, Item 1.<sup>77</sup>

According to Shelley Rigger, the Republic of China "declared the civil war over in 1991 and replaced the goal of recovering the mainland with peaceful unification."<sup>78</sup> However, the People's Republic of China's "idea of unification was to make Taiwan a province of the PRC,"<sup>79</sup> and Taiwan's resistance would be read as secession from "motherland-China" (родина-Китай).<sup>80</sup> That is, the Republic of China demanded peaceful unification and democracy,<sup>81</sup> whereas

72 Ma Yong et al., *The General History of Chinese Tourism Culture* 75 (2016).

73 John F. Copper, "The Origins of Conflict Across the Taiwan Strait: The Problem of Differences in Perceptions", in *Across the Taiwan Strait: Mainland China, Taiwan, and the 1995–1996 Crisis* 41, 72 (Suisheng Zhao ed., 1999).

74 See Ma Yong et al., *supra* note 72, at 75.

75 See generally Shelley Rigger, "Taiwan", in *Politics in China: An Introduction* 468, 478 (William A. Joseph ed., 2014).

76 Constitution of P.R.C. pmbl. (1982) (official translation).

77 Constitution of R.O.C. amend. pmbl. (1991) (official translation).

78 Rigger, *supra* note 75, at 478.

79 *Id.*

80 Lee, *supra* note 5, at 156 (President Lee recalling that Taiwan would not be regarded as harbouring independentist aspirations only if it accepted the People's Republic of China's proposal for unification).

81 See generally *id.* at 62–65.

the People's Republic of China only wanted to absorb Taiwan by any means.<sup>82</sup> Rigger therefore remarked that “[s]ubordinating a democratic Taiwan to a communist PRC was unacceptable to a society that had only recently thrown off single-party authoritarianism. Eventually, the talks broke down.”<sup>83</sup>

A Chinese or Taiwanese citizen who puts a higher premium on the pursuit of unification<sup>84</sup> over democracy would self-identify only as “Chinese.” This “Chinese” person would not care less whether China is democratic, for demo-orientation, under which the Chinese Government decides for the people without their consent,<sup>85</sup> is relatively tolerable (Chinese characteristics).<sup>86</sup> His or her preoccupation would be whether China is unified, because unification is recognized by this kind of “Chinese” person as “the sacred duty of all the Chinese people, including our fellow Chinese in Taiwan.”<sup>87</sup> Furthermore, this person – even if he or she is a citizen of the Republic of China (Taiwan) – would *likely*<sup>88</sup> be a sympathizer of the People's Republic of China, as it is reasonable to assume that the People's Republic of China stands a better chance of unifying China.

If the Chinese cognition of democracy remains traditional, i.e., demo-orientation,<sup>89</sup> that the democratic procedure is supernumerary,<sup>90</sup> the Republic of China's proposal for China's unification<sup>91</sup> would be unpalatable. Unification proponents<sup>92</sup> would characterize Taiwan's rejection of the People's Republic of China's proposal<sup>93</sup> as secessionist, though it was the People's Republic of China that seceded from the Republic of China.<sup>94</sup> Traditional Chinese thought is wholly devoid of democracy, and it is not surprising that some citizens of the Republic of China (Taiwan) are strangers to the spirit of democracy.<sup>95</sup> The

82 Anti-Secession Law (2005).

83 Rigger, *supra* note 75, at 478.

84 Ma Yonget al., *supra* note 72, at 75.

85 See generally Huang & Li, *supra* note 67.

86 See generally Ning Fang, *China's Democracy Path* 1–160 (Wu Yisheng & Liu Aiyun trans., 2015).

87 Constitution of P.R.C. pmb. (1982) (official translation).

88 “Likely,” not “surely.” Unless more evidence is advanced, labelling any person on whatever pretext is jumping the gun.

89 See generally Huang & Li, *supra* note 67.

90 See generally *id.* at 350–55.

91 See generally Lee, *supra* note 5, at 62–65.

92 Ma Yonget al., *supra* note 72, at 75.

93 Rigger, *supra* note 75, at 478.

94 See generally Dillon, *supra* note 28, at 228–55.

95 See generally Chong-Min Park & Yun-Han Chu, “Trends in Attitudes Toward Democracy in Korea and Taiwan”, in *New Challenges for Maturing Democracies in Korea and Taiwan* 27, 33–38 (Larry Diamond & Gi-Wook Shin eds., 2014).

status quo<sup>96</sup> would not sit well with these people, who would vocally endorse the regime which pursues China's unification.<sup>97</sup> Of the two China(s), the People's Republic of China is their obvious preference.<sup>98</sup>

If a citizen of the Republic of China (Taiwan) should be denounced as a "traitor" for siding with the People's Republic of China, an advocate of Taiwan independence should *logically* be too.<sup>99</sup> Both intend to overthrow the Republic of China *per se*. However, neither would be excoriated as a "traitor" under the jurisdiction of the Republic of China unless there has been an armed rebellion,<sup>100</sup> because both positions are protected by the Constitution of the Republic of China under freedom of opinion.<sup>101</sup> Whilst it is *legal* to support the People's Republic of China's proposal<sup>102</sup> in Taiwan, would it have been *moral* for the Chinese to rally around the Japanese Empire because it had a better chance of unifying China – by conquering it – during the Second World War?<sup>103</sup>

Confucius honoured those who die for righteous causes and Mencius admired those who sacrificed their lives for justice. Because I have devoted my whole life to what I found to be just, I am proud to profess that I am righteous at the time of my execution. What I have done indicates what I have learnt from our sages, and right now I no longer feel I have failed my beloved fatherland.<sup>104</sup> – Wen Tian-Xiang (1283)

96 See generally Jiang, *supra* note 52, at 23–27.

97 Sherry Li, "Wu Xing Qi Xia De Kuang Re Zhe: Cong Fan Gong Dao Hong Tong De Ai Guo Tong Xin Hui [The Zealots Under the Five-Starred Red Flag: The Transformation of the Chinese Patriot Alliance Association from Anti-Communism to the Communist Proposed Unification]", *The Reporter*, July 5, 2018, <https://www.twreporter.org/a/about-ilovchinaorg>.

98 Compare Constitution of P.R.C. pmbl. (1982), with Anti-Secession Law arts. 1–9 (2005).

99 Article 2 of the Civil Associations Act (1942/1992) equated advocating communism with advocating secessionism, and the establishment of an association for either was banned before the Article was declared unconstitutional in *Judicial Yuan Interpretation No.644* [2008]. By the English common law rules of interpretation, advocating communism and secessionism are legally of the same kind (*ejusdem generis*).

100 Criminal Code of R.O.C. arts. 100–01 (1935/1992).

101 Constitution of R.O.C. art. 11 (1947).

102 Rigger, *supra* note 75, at 478.

103 See generally Taylor, *supra* note 21, 141–335.

104 Huang, *supra* note 3, at 51–52.

## V When Democracy Eclipses Chinese Identity

When the Japanese were defeated, Taiwan returned to the arms of [our] fatherland; [however,] when the Chinese mainland was taken over, [our] fatherland approached the arms of Taiwan.<sup>105</sup> – Guo Guo-Ji (1949)

If Taiwan had been “part of the sacred territory”<sup>106</sup> of China, it would have been China’s Alsace-Lorraine.<sup>107</sup> The Dutch first claimed sovereignty over Taiwan in 1624, and the Ming Empire (Han-Chinese) “was relieved and content.”<sup>108</sup> However, Lord Koxinga, Prince of Yanping of the Ming Empire, defeated the Dutch and seized Taiwan in 1662.<sup>109</sup> Taiwan was henceforward folded into “the sacred territory”<sup>110</sup> of the Ming Empire,<sup>111</sup> though the Ming Empire had already relinquished mainland China to the ascendant Qing Empire.<sup>112</sup> Again, it is arguable whether the Manchurian Qing Empire was “China,”<sup>113</sup> but they conquered Taiwan too, in 1683.<sup>114</sup> In 1895, Japan took Taiwan from the Qing Empire<sup>115</sup> as the spoils of the First Sino-Japanese War,<sup>116</sup> so when the Republic of China was founded in 1911, Taiwan was not part of the territory.<sup>117</sup> It was incorporated into the Republic of China on October 25, 1945,<sup>118</sup> because the Allies had decided that “all the territories Japan has stolen from the Chinese, such as Manchuria,

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- 105 Chen Jin-Chang, *Jiang Zhong Zheng Qian Tai Ji* [*The Generalissimo's Withdrawal to Taiwan*] 190 (2005) (author's translation).
- 106 Constitution of P.R.C. pmb. (1982) (official translation).
- 107 Huang, *s supra* note 3, at 349–352.
- 108 Frank S.T. Hsiao & Mei-Chu W. Hsiao, “Taiwan in the Global Economy: Past, Present, and Future”, in *Taiwan in the Global Economy: From an Agrarian Economy to an Exporter of High-Tech Products* 161, 204 (Peter C.Y. Chow ed., 2002).
- 109 See generally Tonio Andrade, *Lost Colony: The Untold Story of China's First Great Victory over the West* 1–304 (2011).
- 110 Constitution of P.R.C. pmb. (1982) (official translation).
- 111 Treaty between Koxinga and the Dutch Government art. 2, Feb. 1, 1662.
- 112 See generally Gao Hong-Lei, *Ling Yi Ban Zhong Guo Shi* [*The Other Half of China History*] 217–22 (2012).
- 113 See generally Hsu, *supra* note 20, at 145–54.
- 114 See generally John R. Shepherd, “The Island Frontier of the Ch'ing, 1684–1780”, in *Taiwan: A New History* 107, 108–10 (Murray A. Rubinstein ed., 2007).
- 115 Treaty of Shimonoseki art. 2, Apr. 17, 1895.
- 116 See generally Li Xi-Suo & Li Lai-Rong, *Zhong Guo Jin Dai Shi: Gao Bie Di Zhi* [*The History of Modern China: Terminating the Monarchy*] 180–89 (2008).
- 117 See generally Roy, *supra* note 54, at 32–54.
- 118 Ramon H. Myers, “The Evolution of Democracy in Divided China”, in *Across the Taiwan Strait: Democracy: The Bridge between Mainland China and Taiwan* 37, 37 (Bruce Herschensohn ed., 2002).

Formosa, and The Pescadores, shall be restored to the Republic of China.”<sup>119</sup> “However, in 1949, only [four] years after the island’s restoration, Taiwan became the last outpost (99% of actual control territory) of the [Republic of China] at the end of the Chinese Civil War.”<sup>120</sup> As to the People’s Republic of China, its Government has never ruled Taiwan, not even a single day.

In other words, the people of Taiwan were persons of unknown nationality before 1624, Dutch nationals for 38 years, Ming (Han-Chinese) nationals for 21 years, Qing nationals for 212 years and Japanese nationals for 50 years. They became citizens of the Republic of China on 25 October 1945,<sup>121</sup> and have never been citizens of the People’s Republic of China. Because the “Taiwanese” have changed national identity<sup>122</sup> five times<sup>123</sup> during the past four hundred years, they value democracy more than the Chinese pursuit of unification.<sup>124</sup> When a people’s national identity is in constant flux, why would they insist on being Chinese? Some Taiwanese people also perceive China as a quisling to Taiwan because the Qing Empire ceded Taiwan to Japan in 1895,<sup>125</sup> but the Qing Empire had no political alternative in this matter as it had lost the war.<sup>126</sup>

Another reason some Taiwanese do not want to be pegged as Chinese<sup>127</sup> is that both the Republic of China and Taiwan have strong genes<sup>128</sup> of anti-communism, which later developed into anti-authoritarianism.<sup>129</sup> Taiwan

119 Cairo Declaration, November 27, 1943. See also Potsdam Declaration art. 8, July 26, 1945 (providing that “[t]he terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine”).

120 Huang, *supra* note 3, at 352.

121 Treaty of Peace between Japan and the Republic of China art. 10, Apr. 28, 1952.

122 See generally Christopher Hughes, *Taiwan and Chinese Nationalism: National Identity and Status in International Society* 1–162 (1997).

123 The Han-Chinese identity changed (*Liu-Fa-Bu-Liu-Tou*) when the Manchurian Qing Empire conquered all of China. See generally Gao, *supra* note 112, at 221–22.

124 See generally Hsin-Huang Michael Hsiao, “Sociocultural Transformation in Taiwan Since the 1980s”, in *Taiwan’s Economic Success Since 1980*, at 156, 175–81 (Chao-Cheng Mai & Chien-Sheng Shih ed., 2001).

125 Shih, *supra* note 25, at 138.

126 See generally Kuo Ting-Yee, *Jin Dai Zhong Guo Shi Gang [A Short History of Modern China]* 269–71 (1986).

127 See Cheng Su-Feng, “Jie Xi Tai Wan Ren / Zhong Guo Ren Ren Tong: 2000–2021 [An Analysis of Taiwanese/Chinese Identity: 2000–2021]”, *Xuan Ju Yan Jiu [J. Electoral Stud.]*, Nov. 2022, at 73.

128 See generally Richard Dawkins, *The Selfish Gene* 1–266 (1989).

129 Yu, *supra* note 51, at 62–63.

was part of and under the rule of the fascist Japanese Empire,<sup>130</sup> and the Republic of China, especially when it was derided as the “Chiang Kai-Shek clan,”<sup>131</sup> was a notorious anti-communist regime, a “tyranny” officially written into the high school history textbook in mainland China.<sup>132</sup> That is, Taiwan’s embrace of democracy since the 1990s has galvanized its citizens’ anti-communist sentiment with a new and legitimate purpose,<sup>133</sup> anti-authoritarianism.<sup>134</sup> For example, Fu-Lai Tony Yu observed:

Taiwan has slowly evolved into a democratic society.... On the other hand, Communist China still remains on one-party rule. As a result of huge political differences between Taiwan and mainland China, more and more second or third generation of Taiwan-born Mainlanders started to refer themselves racially and culturally as Chinese, but politically Taiwanese. Taiwanese people refuse to be ruled by the Chinese Communist Party. They feel that Taiwan should distance itself from mainland China and not be unified with the Communists. In order to isolate Taiwan from mainland China, Taiwanese people have to reject Chineseness.... Only by removing Chineseness can Taiwanese people feel they are Taiwanese.<sup>135</sup>

From anti-communism to anti-authoritarianism, it is clear that “Taiwanese people refuse to be ruled by the Chinese Communist Party,”<sup>136</sup> and some of them are loath to continue to self-identify as Chinese.<sup>137</sup> Perhaps it has become a political taboo for them to be misidentified as citizens of the People’s Republic of China.<sup>138</sup> However, the political realities engendered by the “One China Policy”<sup>139</sup> and the United Nations General Assembly Resolution 2758 (1971) make the people skittish about choosing the Chinese identity and liberal democracy concurrently. That is, we agree with James Soong, who said in 2001 that “‘anti-Chinese communists’ did not necessarily mean ‘anti-China’

130 Compare Ken Ishida, *Japan, Italy and the Road to the Tripartite Alliance* 37–52 (2018), with Roy, *supra* note 54, at 32–54.

131 G. A. Res. 2758, *supra* note 39.

132 See generally People’s Education Press, 2 *Zhong Guo Jin Dai Xian Dai Shi* [*Modern History of China*] 1–71 (2000).

133 Compare Samantha F. Ravich, *Marketization and Democracy: East Asian Experiences* 104 (2000), with Yu, *supra* note 51, at 62–63.

134 Compare Judicial Yuan Interpretation No. 31 [1954], with Judicial Yuan Interpretation No. 261 [1990].

135 Yu, *supra* note 51, at 62–63.

136 *Id.*

137 *Id.*

138 Cf. Shelley Shan, “CAL Font Size on Planes Reduced”, *Taipei Times*, Nov. 27, 2020, at 1.

139 See generally Chow, *supra* note 27.

and that Taiwanese were also Chinese,<sup>140</sup> but we will not skewer anyone for self-identifying as “Taiwanese only.” For that is not only an understandable choice<sup>141</sup> but a right protected by the Constitution of the Republic of “China.”<sup>142</sup>

## VI When Chinese Identity and Democracy Reach Parity

[We] the twenty-three million people of either “Taiwan” or the “Republic of China” have lived together for more than sixty years. During this time, [Taiwan grew] from a developing economy to a developed economy. Together, [we] lived through the threats from the “communist bandits,” and together [we] lived through the Second Taiwan Strait Crisis. All ethnic groups [in Taiwan] were persecuted under martial law, and all of us are survivors of the 1999 Chi-Chi earthquake.... We listen to the same songs, watch the same movies, pronounce [Chinese] words the same “Taiwanese” way.... [If] you prefer to call our nation the “Republic of China,” that is okay [with me. If] I want to call it “Taiwan,” will you respect [my choice]? ... Democracy [in Taiwan] means “one nation, diverse interpretations,” for it represents [the Taiwanese people’s] magnanimity and respect [for each other].<sup>143</sup> – Shih Ming-Te (2011)

Shih Ming-Te, former Chairman of the Democratic Progressive Party, preached respect for the Taiwanese national identity because people in Taiwan and China are stuck in a rut, seeing each other in the relative context of their own identity.<sup>144</sup> For example, Ma Ying-Jeou was labelled a communist jackal (*Mai-Tai*) during his presidency,<sup>145</sup> but no evidence of his “treasonable acts” has ever surfaced.<sup>146</sup> Perhaps it is unlikely to be found forever. Meanwhile, the Chinese Communist Party typecasts any President of the Republic of China – if he or

140 Chien-Kai Chen, *Political Economy of China-Taiwan Relations: Origins and Development* 31 (2018).

141 See generally Yu, *supra* note 51, at 62–63.

142 Constitution of R.O.C. art. 11 (1947). See also Judicial Yuan Interpretation No. 644 [2008].

143 Shih, *supra* note 25, at 78–79 (authors’ translation).

144 E.g., Shiau-Chi Shen & Nai-The Wu, “Ethnic and Civic Nationalisms: Two Roads to the Formation of a Taiwanese Nation”, in *The “One China” Dilemma*, *supra* note 27, at 117, 136; Keoni Everington, “China Threatens to ‘Wipe Out’ Taiwan President with War”, *Taiwan News*, Sept. 21, 2020, <https://www.taiwannews.com.tw/en/news/4013408>.

145 E.g., Chen Wei-Han, “Ma-Xi Meeting: Ma’s Acknowledgement of ‘One China’ is ‘Damaging’”, *Taipei Times*, Nov. 8, 2015, at 3.

146 By the fundamental legal principle of the presumption of innocence, which is recognised in Taiwan, no one can claim that President Ma Ying-Jeou is a traitor. He retired in 2016, and if he were guilty, there should have been plenty of time to prosecute him.

she is a member of the Democratic Progressive Party – as Taiwan independentist;<sup>147</sup> the only proof required is the President's “[refusal] to be ruled by the Chinese Communist Party.”<sup>148</sup> Shih identified himself as Taiwanese and his home country as the Republic of China.<sup>149</sup> So what label should be slapped on him?

There are some citizens of the Republic of China who consider Chinese cultural identity and democracy equally important. They prefer to be “Chinese” because “Taiwan's official name is [still] the Republic of China.”<sup>150</sup> However, they also “refuse to be ruled by the Chinese Communist Party,”<sup>151</sup> whilst upholding the Constitution of the Republic of China<sup>152</sup> in the name of democracy<sup>153</sup> and human rights.<sup>154</sup> Most importantly, no matter which way the political wind blows,<sup>155</sup> they have the unshakable belief that “Taiwan's embrace of democracy shows a better path for all the Chinese people.”<sup>156</sup> For them, the Republic of China is their home country,<sup>157</sup> and there is no need to change national identity simply because the People's Republic of China is recognized as “China” by the United Nations.<sup>158</sup> They find “unification versus independence” is not an urgent political issue which is worth debating all the time.<sup>159</sup> Some of them might still nurse the dream that China will be unified under the Republic of China,<sup>160</sup> though all of them accept the present “Republic of China on Taiwan.”<sup>161</sup>

147 *E.g.*, Everington, *supra* note 144.

148 Yu, *supra* note 51, at 63.

149 Shih, *supra* note 25, at 38–79.

150 Kerns, *supra* note 2, at 66.

151 Yu, *supra* note 51, at 63.

152 Constitution of R.O.C. (1947).

153 *Id.* arts. 1–2.

154 *Id.* arts. 7–24.

155 It is a common sentiment that Taiwan independence is a rational choice because the Republic of China is too small and impotent to unify China. But the flip side of the underlying logic would be China can be unified only by military force and institutional superiority is irrelevant. If China can be unified peacefully, there is no reason to believe that the institutionally superior “China” will lose, i.e., One China, Better System. *See generally* Chang-Ven Chen, Chao-Chin Su & Yong-Huang Lin, “The Rule of Law in China and Taiwan: Toward ‘One China, Better System’”, *Issues & Studies*, Dec. 2010, at 217.

156 “Remarks by Vice President Pence on the Administration's Policy Toward China”, *supra* note 35.

157 Shih, *supra* note 25, at 59–60.

158 G. A. Res. 2758, *supra* note 39.

159 Su, *supra* note 4, at 406–11.

160 Constitution of R.O.C. amend. pmb. (1991).

161 Shih, *supra* note 25, at 128–31.

However, these citizens of the Republic of China are categorized as Taiwan independentists under the Chinese communist taxonomy<sup>162</sup> because they “refuse to be ruled by the Chinese Communist Party.”<sup>163</sup> This sorting is logically based on a “shift of meaning” argument, because it synonymizes the Chinese Communist Party with China.<sup>164</sup> But it is the case in reality, for one who self-identifies as “Chinese” accepts communist rule in the eyes of the Chinese communists,<sup>165</sup> and anyone from Taiwan who rebuffs communist rule is a Taiwan independentist, their Chinese self-identification be damned. It would take a nincompoop to peddle “One China, separate interpretations,”<sup>166</sup> because the Constitution of the People’s Republic of China says that “Taiwan is part of the sacred territory of the People’s Republic of China,”<sup>167</sup> instead of Taiwan is part of China.

Ironically, these very same citizens of the Republic of China are placed under the umbrella “the Chinese unification clan” (*Tong-Pai*) by Taiwan independentists for adhering to the provisions of the Constitution of the Republic of China concerning China’s unification (*Xian-Fa-Yi-Zhong*).<sup>168</sup> But no part of the Constitution offers up the statehood of the Republic of China on the altar of China’s unification,<sup>169</sup> so is it right to lump these patriotic, Constitution-abiding citizens with the Chinese unification advocates and label the bunch “the Chinese unification clan” (*Tong-Pai*)? This taxonomy is logically based on a “false dichotomy” argument, as it presumes homogeneity amongst people who do not self-identify as Taiwan independentists.<sup>170</sup> Such “black-or-white fallacy” may create a perception of bias, that only Taiwan independentists are democrats, and Chinese identity and democracy are water and oil.<sup>171</sup>

162 Taiwan Aff. Office of the State Council (P.R.C.), *supra* note 43 (indicating that being absorbed into the People’s Republic of China is Taiwan’s only option and the People’s Republic of China would not tolerate any form of Taiwanese independence, including the status quo under the name of the Republic of China).

163 Yu, *supra* note 51, at 63.

164 Chin Heng-Wei, “China and CCP Are Inseparable”, *Taipei Times*, Oct. 8, 2020, at 8.

165 Constitution of P.R.C. art. 111 (1982/2018).

166 See generally Ian Jeffries, *Economies in Transition: A Guide to China, Cuba, Mongolia, North Korea and Vietnam at the Turn of the Twenty-First Century* 97–104 (2001).

167 Constitution of P.R.C. pmbl. (1982) (official translation).

168 Compare Constitution of R.O.C. art. 4 (1947), with Constitution of R.O.C. amend. pmbl. (1991).

169 *Id.*

170 See generally Jiang, *supra* note 52, at 23–25.

171 See John F. Copper, *Consolidating Taiwan’s Democracy* 146 (2005) (indicating that “[t]hey see Taiwanese being Chinese in about the same way white Americans see themselves as European.... Hence, they do not view Taiwan as a ‘Chinese entity.’ The Republic of China

## VII Conclusion

When Michael Pence intoned that “America will always believe that Taiwan’s embrace of democracy shows a better path for all the Chinese people,”<sup>172</sup> we were mystified by his reasoning at all. For if the Taiwanese are not recognized as “Chinese,” it makes little sense to point to Taiwan’s embrace of democracy as a beacon for all the Chinese people.<sup>173</sup> Edwin O. Reischauer once argued that “[c]ulturally Japan is the daughter of the Chinese civilization,”<sup>174</sup> but that does not lead to the corollary that Japan’s embrace of democracy is worthy of emulation by all the Chinese people. If the Republic of China (Taiwan) is not another “China,” what are the differences between Taiwan and Japan in relation to China?

Pence is not alone in perpetuating this incongruous taxonomy.<sup>175</sup> The world considers the Taiwanese “Chinese” only when decrying the anti-democratic conduct of the People’s Republic of China, and it is geopolitics that drives this incongruity.<sup>176</sup> However, democracy is a touchstone that not only differentiates the Chinese from the Taiwanese (or Taiwanese-Chinese) but also separates the Republic of China from the People’s Republic of China. It is neglectfully reductive to reidentify citizens from the democratized “China” as “Taiwanese” and rename the country “Taiwan,” and the fact that “Taiwan’s official name is the Republic of China”<sup>177</sup> is, for too long, the elephant in the room. As Shih Ming-Te preached, mutual respect for national identity is essential because some citizens prefer the “Republic of China” and others like “Taiwan.”<sup>178</sup> So the classical dichotomy of “China” and “Taiwan” only<sup>179</sup> should be reappraised. In fact, there are at least three strains of national identity in Taiwan: “China, whatever it refers to,” “Taiwan” and the “Republic of China.”

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will become simply Taiwan, or perhaps the ‘Republic of Taiwan,’ at some time in the future”).

172 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

173 *Id.*

174 Lalima Varma, “Trends in Japan’s Asia Policy”, in *Japanese Studies: Changing Global Profile* 63, 64 (P.A. George ed., 2010).

175 “Remarks by Vice President Pence on the Administration’s Policy Toward China”, *supra* note 35.

176 G. A. Res. 2758, *supra* note 39.

177 A Kerns, *supra* note 2, at 66.

178 Shih, *supra* note 25, at 78–79.

179 See generally Lee, *supra* note 5, at 76–79.