

# The Traveling *Waqf*: Property, Religion, and Mobility beyond China

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## Abstract

For most of their millennial history in China, Muslims have established pious endowments called *waqfs* that served a variety of functions, including providing land to build mosques. The founding of *waqfs* radically changed in 1949, when the Communists confiscated land. Recently, a Hui who was performing the hajj in Saudi Arabia discovered a pre-Communist *waqfiyya* or document that established a *waqf* in Gansu Province in northwest China. The contemporary Chinese property regime prohibits religious land and hence the *waqfiyya* is legally void, yet its return afforded the Hui an opportunity to reflect on the relationships between law, lineage, and public goods, laying a foundation for an historical anthropology of Chinese *waqfs*. Drawing on material from historical Gansu and ethnographic encounters, I argue that whereas shari'a suffered a kind of "structural death" in China, it does have its own "afterlife," as illustrated in documents that travel across time and assume new meanings through transnational mobility and memory.

## Keywords

*waqf* – property – inheritance – memory – diaspora – historical anthropology – China

## Property in Exile and Return

In 1991, a Chinese Muslim businessman, a Hui, based in Linxia, in southwestern Gansu, opened a package that he had received from Jeddah, Saudi Arabia.

Inside, he found a cache of legal documents, including a deed of “family division” (*fenjia qi'yue*). The inheritance deed had been formulated in 1935 by Ma Lin (1873-1945), the civil governor of Qinghai and one of northwest China’s “Ma family warlords,” rulers (sometimes horrifically violent ones), national and international diplomats, and patrons of Islam who controlled most of the region for the first half of the twentieth century. The deed described Ma Lin’s and his siblings’ property in and around Linxia, which Hui call “China’s Little Mecca,” a city they consider holy because of its large concentration of mosques and Sufi tomb complexes. The deed transferred the property described therein to the family’s next generation.

Ma Lin’s inheritance deed offers a new way to assess how Hui remember “the warlord period,” conventionally understood as the time from the end of the Republic (1916) to the start of the Nanjing Decade (1928), but also its origins in the uprisings of the late nineteenth century and the decades following it until 1949. During this period, which saw the transition from the Chinese Empire to the modern state, a number of related lineages, all with the surname Ma, rose to prominence through trade in the Sino-Tibetan borderlands of the northwest (Forbes 1986; Lawson 2013). Hui remember this period as a time of interethnic violence that sometimes fanned resistance against the Manchu Qing dynasty (1644-1911), leading to a number of rebellions (Atwill 2005; Ekvall 1938; Kim 2004).

After the fall of the Qing dynasty in 1911, the Ma families ruled the northwest by controlling material resources, wielding sheer military force, and fostering Islamic modernism. The end of the dynasty resulted in a power struggle that led to a civil war between the Communists and Nationalists that lasted until 1949, when the victorious Communists assumed control of the country. Up until that time, however, the Mas brokered power in the northwest – a region that stretched from Xinjiang, which was just emerging from the “Great Game” between the Russian and British Empires, to Manchukuo, a puppet state ruled by the Japanese – through a number of shifting alliances with domestic and foreign powers. The Mas mostly affiliated with the Nationalist Army, but they also had ties to Japanese colonialists, Uyghur *begs*, and Muslim missionaries from Bukhara and beyond, as well as to the Communists. By managing these relations, the Mas created a number of civilian and military governments, some with overlapping jurisdictions. They dominated the political economy of the northwest until the Red Army defeated them in 1949. Chinese historiography of the Ma family offers mainly negative appraisals of their influence, emphasizing their military campaigns (see, e.g., Ma 2004; Yang 2007). One dimension of the Ma family’s prominence was their support of the Yihewani (Muslim

Brotherhood) (Chang 2015). Histories written by traditionalist Hui also condemn Ma family oppression (Mingde Mosque of Linxia City 2004: 26).

Though both official and unofficial histories tend to equate Ma transnational connections with oppression, the Mas were also responsible for a revival of Islam in early twentieth-century China, due, in part, to their overseas contacts. Mao Yufeng has observed that the Chinese Muslim modernist movement was part of a broader shift that led to a number of intellectual, social, and political changes throughout the Muslim world (2011: 375). One aspect of this movement was the promotion of shari'a, the legal-ethical order of Islam, through educational reform, textual translation, and charity. Although differing legal and doctrinal interpretations of Islam frequently triggered sectarian discord in the public sphere, Ma Lin's deed provides a window on how shari'a informed the most intimate of relations – within and between a family's generations.

The relationship between land and law – whose land and whose law? – was formative of this period. In 1935, the year Ma Lin wrote the inheritance deed, the Red Army advanced across southern Gansu on the Long March and made Longdong, in eastern Gansu, the CCP headquarters. By confiscating property from landowners, the CCP gained supporters among the landless farmers. Land grabs superseded formal legal processes in such places, although farther east of Longdong, the Communists, supported by the Nationalist, or Guomindang, Party (GMD) during the Second United Front against the Japanese, established in 1937 the Shaan-Gan-Ning Border Region Government, which had a nascent legal system (Cong 2014).<sup>1</sup> As part of its nationwide land policy, the Communists confiscated Ma Lin's property in the 1950s, the very property whose protection he had sought to enshrine in the form of the deed, a legal document that had been enforceable under the regime that he and his agnates established in Qinghai and Gansu.

In the People's Republic of China (PRC), established by the Communists, the only governing law is the law of the state; shari'a has no legal status. The documents received by the Hui businessman had become severed from the property whose ownership they determined; they had become an inheritance "enforced" not by the operation of law but only by memory. Property in modern China, which has been the object of reform by successive regimes, is a touchstone of identity (familial, lineal, ethnic, and religious), the remembrance of

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1 Although the statute of the Border Region high court specified that its judicial system was a provincial-level branch of the GMD judiciary, in truth, the courts operated mainly through the auspices of the CCP (Shaanxi sheng dang'anguan [Shaanxi Provincial Archives] and Shaanxi sheng shehui kexueyuan [Shaanxi Provincial Social Science Academy] 1986).

which is produced through whispered narratives and verified in peripatetic writings.

Wael Hallaq has argued that shari'a suffered a "structural death" in the nineteenth and twentieth centuries as a result of colonization (Hallaq 2009). He refers to a broad set of legal changes from Transoxiana to Indonesia, although he is principally concerned with transformations in the Near East. Many Muslim-majority societies developed shari'a institutions such as courts and legal personnel, jurists and scholars, and canons of jurisprudence. Muslims, including Hui, are a minority in China, numbering approximately 23 million, almost all of whom are Sunni and follow the Hanafi school of law. As a result of generations of adaptation to a predominately Han society, Hui have not, for the most part, developed shari'a institutions (Erie 2016a: ch. 2). Rather, they have noninstitutionalized forms of shari'a that have become incorporated into Chinese social "customs." Nonetheless, the long twentieth century did see the Chinese state attack the authorities of Hui popular shari'a – namely, mosque-based clerics and their texts – in campaigns that continue to evoke strong collective memories.

The transformation of shari'a in China results less from a rupture of modernity and more from a long period of adaptation interrupted by spurts of violent change. Drawing on both history and anthropology,<sup>2</sup> in this article I ask what happens when property documents, based on shari'a, "return" to jurisdictions that no longer recognize their legal source. I examine this question with reference to not only Ma Lin's deed but also a different document included in the Ma Lin bundle: a *waqfiyya*, a document that records the act of establishing a *waqf* or pious endowment. The *waqfiyya* in question is one of the few extant pre-Communist *waqfiyyas* written by and for Hui. Whereas the triconsonantal root of *waqf* literally means "to bring to a standstill" (Cowan 1976: 1278-1279), the Ma Lin *waqfiyya* shows that documents that enshrine rights and obligations in property move, circulate across jurisdictions, both legal and chronological, and attain new meanings as they travel (on such movement, see generally, Hussin 2014). Recent studies of Uyghur documents such as pre-Communist deeds of sale (Sugawara 2010) have cast new light on the linkages between Islam and property prior to the establishment of the modern Chinese state. Furthering this line of thought, I use the Ma Lin *waqfiyya* to assess the reentry of texts written by Muslims in communities embedded in regimes that have reconfigured the relationship between law and religion. I examine

2 Interdisciplinary conversations on both sides of the Atlantic have spurred interest in the increasing relevance of anthropology for history and vice versa, particularly through the prism of law (see e.g., Dresch and Skoda 2012; Pirie 2013; Willford and Tagliacozzo 2009).

the traveling *waqfiyya* as a way to consider how “legal” forms can be transformed – destroyed and reconstituted by different parties.

In the pre-Communist period, Hui established *waqfs* that were largely informal, meaning, not part of a state bureaucracy, and often exhibited deep borrowings from Han Chinese property concepts, including, centrally, the distinction between possession and occupancy. Moreover, property was not always protected by the state; rather, the rules that governed transactions in property were enforced by kin-based groups (Ruskola 2000; Sangren 1984; Zhang and Zhao 2014) and ethno-religious communities (Lin and Tsai 2014; Sturgeon 2004; Yeh 2004). Communist rule structurally blocked already informal rules, although, in recent years, the practice of *waqf* formation is again changing, at the same time as China is increasing its interaction with Muslim majority societies.<sup>3</sup> These changes occur as a result of another global Islamic revival, one quite different from that of the early twentieth century (Green 2015; Mahmood 2005; Roy 2004). In China, this revival occurs not against but *through* the state, a state that is stronger than those that existed in the late Qing and Republican periods. And, once again, the Ma family is connecting with overseas co-religionists and family members, now in the diaspora. The result is that memory transforms property from inheritance in a legalistic sense to patrimony more generally. Thus, whereas shari‘a may have suffered a kind of “structural death,” the China case shows that *waqfs* may also have an “afterlife,” sustained through pilgrimage, media, and family participation in globalizing networks.

The remainder of this article is divided into three sections, followed by a conclusion. The first section provides an overview of the *waqf* in early modern China, during the transition from empire to modern nation-state. This transition includes the late imperial period (in my use, the latter half of the Qing dynasty of 1644 to 1911 – in other words, the eighteenth century to the early twentieth century), the Republican period (1911-1949), and the Communist period (1949 to today). The period under investigation cuts across these standard periods of Chinese history – namely, the end of the Qing period and most of the Republican period. I base the first section on evidence from local mosque and Sufi tomb histories, steles, and personal accounts that have survived the imposition of a socialist property system. The second section examines the relative paucity of textual material evincing the practice of establishing endowments in Hui communities. The third section focuses on the contemporary

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3 A growing number of scholars have studied property transmission, often in postcolonial and postsocialist settings that may produce hybrid forms of property (Gilsenan 2012; Ho 2006; Verdery 1998; Yahaya 2013).

circulation of documents that concern property, a circulation enabled by the Hui religious revival. Following the growth of the Ma diaspora, recent decades have seen a “return” of artifacts from the warlord period. This section describes the Ma Lin *waqfiyya* through encounters with Ma family descendants and others with local knowledge both within and outside of China. The study of the property’s movement across jurisdictions and time requires methodological flexibility: I track the life and afterlife of the Ma Lin *waqf* from archive to field and from China to Saudi Arabia and back again. The article concludes with reflections on how property’s afterlife can contribute to the study of Islamic revivals.

### The *Waqf* in Early Modern China

*Waqf* is the founding of a charitable endowment by someone intending to perform a pious deed, either for a public good or for one’s family, in perpetuity (Peters et al. 2016). From al-Andalus to Southeast Asia, wherever Muslims settled, they established *waqfs*. Shari’a permits two types of *waqfs*: public and private. The first type comprises religious institutions (mosques, Sufi lodges, and shrines), educational facilities (e.g., *madradas* and libraries), humanitarian institutions (e.g., soup kitchens and medical dispensaries), and public utilities (e.g., bridges, fountains, and inns). The revenues of these *waqfs* were controlled by founders and administrators to cover the costs of public services. *Waqfs* were integral to social and economic life in Muslim societies, as “the most important institution for the provision of community social services in Islamdom” (McChesney 1991: 4). As early as the Umayyad period (661-750), rulers gradually incorporated pious endowments into their administration, due, in no small part, to the large revenues that they generated. The Ottoman Empire featured a vast *waqf* bureaucracy that provided quasi-banking services such as cash holding and lending (van Leeuwen 1999). The second type, the private or family *waqf* (*waqf ahli*), is either an *inter vivos* gift to descendants or a product of a will, in which case, it cannot exceed one-third of the benefactor’s estate (Powers 1999: 1173-74).

Like their co-religionists, Hui established public *waqfs* in communities centered on mosques (on Hanafi *waqf* jurisprudence, see Hennigan 2004). The main source of evidence for the practice of the *waqf* in China is stone steles erected on mosque land or inscriptions on tombs. Found in southwestern port cities such as Quanzhou and Guangzhou, these steles, some of which are inscribed in Arabic, record the pious gifts of foreign Muslims and the earliest generations of Hui (Chen 1984; Chen and Kalus 1991). Although the scope of

what they record is much wider than *waqfs*, these steles do commemorate charitable acts such as the donation of land or money for founding or repairing a mosque. The nature of the surviving evidence shows a greater proportion of public endowments, although it is unknown whether this preponderance accurately reflects pre-Communist *waqf* types.

Evidence of the donation of land for religious purposes survives from the late imperial period. For example, a stone tablet, dated to 1896, discovered at a mosque in Hohhot, Inner Mongolia, in 1988, mentions two brothers who gave resources to the mosque to build a screen wall, upon which they had written, “Leave a good name that will live forever” (*wangu liufang*) (Yu and Lei 2001: 235). In Nanjing, a 1892 tablet records the donation of two men, one man named Ma Zhicheng and the other identified only by his title of “cleric.” The two men donated the rent generated from their properties to the mosque to build a prayer hall (Yu and Lei 2001: 248). Hui continued to interact with foreign Muslims throughout this period, partly through the establishment of *waqfs*. For instance, one stele, dating to as early as 1785, explains how an Arab Muslim known only as “Tanni” donated residential property to the Huai Sheng (“Cherish the Sage [i.e., Muhammad]”) Mosque in Guangzhou for rental income (Yu and Lei 2001: 266). Records of gifts of property, within and beyond China, continued throughout the Republican period, as I demonstrate below.

While conducting fieldwork on the contemporary practice of Islamic law among Hui between 2009 and 2015, I found a number of records of *waqfs* in historical documents kept by mosques and Sufi tomb complexes, as well as in private archives. These records were confirmed by my interviews with elder members of mosque and Sufi tomb communities. The evidence suggests that the practice of establishing *waqfs* was extensive throughout the northwest and that most mosques held land through such instruments. In Linxia, at least some of the thirty-four mosques in the city proper were established through the donation of a *waqf*. For instance, senior members of the Old Glory Mosque (Lao Hua Si), one of Linxia’s oldest mosques, told me that their mosque had been founded by such an endowment in 1368. Similarly, many of the Sufi tomb complexes within or outside the city were also established through *waqfs*.<sup>4</sup>

4 One example is the Bi Family Field Sufi Tomb Complex (Bi Jia Chang Gongbei) in the western part of Linxia, the center of the *menhuan* (Sufi solidarity), also named Bi Family. The founder of the *menhuan*, Ma Zongsheng, gifted eight strings of copper coins to a prominent Linxia family named Bi to purchase their barley field for the purpose of establishing a Muslim cemetery, a transaction to which the family agreed. Ma Zongsheng’s successor built a tomb there, and Ma himself was buried on the spot, establishing the base of worship for the *menhuan* (Bi jiachang gongbei guanweihui [Bi Family Field Tomb Complex Administrative Committee] 2010: 8).

The *waqf* touches on multiple aspects of shari‘a, including property, inheritance, and administrative law. Ottoman institutions based on *waqfs*, for example, were extremely complex, requiring their own staff of jurists. By comparison, Chinese *waqfs*, for the most part, were straightforward gifts. In terms of scale, they were smaller than Ottoman or Mamluk *waqfs*, although Sufi tombs might serve as pilgrimage centers for upwards of tens of thousands of followers on the annual death days of saints. Although generally more modest, these *waqfs* fulfilled the same functions among Hui (or foreign Muslims involved in Chinese affairs) as more administratively complex *waqfs* did for Muslims elsewhere. In founding their version of *waqfs*, Hui fulfilled the formal requirements of what Muslims elsewhere referred to as “*waqf*.” Many records mention the supplication (*du‘ā*) to God of either the donor or the recipient, usually the cleric of the mosque, in the founding act, to sanctify either the act of giving or the receipt of rent. Such supplications evince the intent of the founder, namely, that the transfer should remain in perpetuity: “the good name that will live forever.”

Imperial law in China appears to have allowed permitted religious property, such as *waqfs*. The fact that land gifts did not run afoul of Chinese imperial law points to the flexibility of imperial rules (cf. Benton and Ross 2013). Against long-standing views that Chinese law was mainly penal (Bodde 1963), recent scholarship has demonstrated the dynamic role of civil and commercial life, through contracts and property transfers, in late imperial and Republican China (Allee 1994; Bernhardt 1999; Bernhardt and Huang 1994; Dykstra 2014; Huang 2001; Li 2012; Ocko 1991; Zelin et al. 2004). Consequently, imperial law largely protected customary sources of law regarding lineage or corporate property (Ruskola 2000: 1661; Zhang 2014: 206). In southern China and in Taiwan, for example, Han Chinese formed corporations, surname associations, and deity cults, some based on lineage, that purchased shares in a common estate that served a variety of religious, political, and economic functions (Chung 2010; Sangren 1984).

Such forms of property served a collective or “public” good, were established in perpetuity, and were inalienable. Some scholars have argued that they were established to mitigate the effects of the Chinese practice known as “the division of family property” (*fenjia*), which awarded sons an equal inheritance in land (Cohen 2004; Wakefield 1998; Watson 1990). These corporate properties were functionally equivalent to the family endowment (*waqf ahli*) that Muslims have used to circumvent the shari‘a inheritance rules (Powers 1999). Like Chinese family division, the Qur’ānic rules splinter property ownership. When Muslims disputed the use or management of *waqfs* in China, they had recourse either to communal types of conflict resolution or to local magistrates who

would consult relevant sources (i.e., contracts or customary law) to resolve conflicts.<sup>5</sup>

The flexibility of the state legal system in the imperial period continued into the Republican period, although the functionality of courts during this portion of the warlord period in northwest China is unclear. According to the 1941 *Judicial Yearbook*, in 1936, there were nineteen Nationalist courts and sixty-seven judges<sup>6</sup> in Gansu (Sifabu bianyi chu [Ministry of Justice Translation and Editing Department] 1941: 157). From 1927 to 1939, the high court in Gansu adjudicated 476 civil disputes touching on “personal matters,” such as land.<sup>7</sup> By comparison, the high court in Jiangsu, a more economically prosperous coastal province, adjudicated 14,696 civil cases (Sifabu bianyi chu [Ministry of Justice Translation and Editing Department] 1941: 168). In 1937, the total budget for the nationwide Judicial Administration Department (Sifa Xingzhengbu) was 189,504 yuan, with 112,896 yuan in expenditures. The GMD Gansu Judicial Administration Department had a budget of 25,540 yuan in 1931 and 142,038 yuan in 1936 (Sifabu bianyi chu [Ministry of Justice Translation and Editing Department] 1941: 386-388). These figures suggest that there was a court presence in the provincial capitals, major cities, and county seats, even if the courts were not fully staffed. It is reasonable to conclude that Hui, especially governing elite such as Ma Lin, would write property documents with the conviction that if problems were to arise in the course of administering the property, courts would enforce the terms of the agreement.

The flexibility of the imperial and Republican legal systems changed radically within the first decade of the CCP’s land reforms in the 1950s. The Communists abolished the Nationalist legal system in 1949,<sup>8</sup> and with their land

5 Qing law had more severe penalties for Muslims who committed crimes than Han who committed the same crimes. Thus, from a public law perspective, the imperial legal system discriminated against Muslims. Nonetheless, discriminatory provisions did not stop Hui from relying on private law and there are ample records of them suing each other (Lipman 1999, 2005).

6 The title of “judge” was a loose one in Republican China; nonetheless, the Nanjing decade (1927-1937) witnessed an increase in the professionalization of judges (Conner 1994; Tiffert forthcoming).

7 The sums of money at the center of litigation could be considerable. For instance, in Gansu, there were 11 cases for the amount of 500 yuan, 12 cases for the amount of 1,000 to 2,000 yuan, 21 cases for the amount of 1,000 to 5,000 yuan, and 1 case for a sum of more than 20,000 yuan (Sifabu bianyi chu [Ministry of Justice Translation and Editing Department] 1941: 186).

8 See “Instruction on the Abolition of the Collection of the Six Laws of the GMD and the Confirmation of the Judicial Principles of the Liberated Areas [Guanyu feichu

reform, they eradicated all private interests in land. In Gansu, Hui landowners, mosques, and Sufi tomb complexes were the targets of state surveillance and were documented accordingly, as the social sciences became one way by which the government administered the new Chinese nation (Lam 2011). Internal CCP documents from the Gansu Provincial Archive in Lanzhou show that, beginning in the 1950s, the Communists conducted surveys of Islamic institutions, their religious personnel, and their total assets. According to these reports, in 1956, Gansu had 4,528 mosques, 4,579 clerics, 7,537 students (*manla*), and some 82,796 *mu*<sup>9</sup> of land owned by mosques, Sufi tomb complexes, and “places of religious instruction” (*daotang*). The land comprised 0.2 percent of the province’s 40 million *mu* of arable land (Zhonggong Wudu diwei tongzhanbu [Wudu Prefectural CCP UFWD] 1956).

The Communists catalogued the material assets of Hui communities with great precision. For instance, a report by the Central Guyuan Prefectural Party Committee United Front Work Department, issued on 15 May 1956, assessed the results of a “survey to know the real situation” (*modi diaocha*). The report specified that Guyuan<sup>10</sup> had 23 Sufi tomb complexes that owned 5,641 *mu* of land, 600 *mu* of forest, 91 cows, 15 mules, 16 horses, and 931 sheep. Additionally, Guyuan had 5 places of religious instruction that owned 19,480 *mu* of land, 1,530 *mu* of forest, 108 cows, 23 mules, 6 horses, and 1,034 sheep. In addition, 986 mosques possessed 6,431 *mu* of land. The document also specifies how Islamic institutions had acquired their land, identifying three sources: “one, using the lowest price of the land to purchase all private land [owned by] those of their community; two, ruthlessly plundering and grabbing the land of childless households; three, accepting other communities’ free gifts (*kuizeng*) of land” (Zhonggong Guyuan diwei tongzhanbu [Central Guyuan Prefectural Party Committee UFWD] 1956: 2). The Communists had little tolerance for *waqfs* as lands gifted through acts of religious piety and which embodied those qualities of property that were anathema to Chinese socialism – they were religious, feudal, and exploitative.

In Linxia, land reform began in earnest in 1951, when the courtyards of the Ma family members, most of whom were patrons of the Yihewani teaching school (Lipman 1997), were confiscated or destroyed. According to official

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Guomindang de ‘Liufaquanshu’ he queding jiefangqu sifa yuanze de zhishi],” issued by the Central Committee of the CCP on 22 February 1949 (Wang 2007: 279).

9 1 *mu* is equal to one-sixth of a hectare.

10 Guyuan, a county with a population of 1.5 million people, almost half of whom are Hui, is 500 kilometers to the northeast of Linxia. During the Qing period, it was within Gansu Province although today it is in Ningxia Hui Autonomous Prefecture.

records, 1,179 *mu* of land owned by the Ma family were expropriated and subsequently reallocated to 1,069 households or 5,860 people (Linxia shi difang zhi bianzuan weiyuanhui [Linxia City Annals Compilation Committee] 1995: 566). A 1952 document produced by the Linxia East District Land Reform Ethnic Affairs Committee (the “Committee”) details attempts by the Committee to persuade farmers to support land reform. The work team, which was headed by a Salar (a member of a small Turkic group in China that traces its origins to Samarkand), consisted of 82 individuals, including 42 Hui, 27 Han, 10 Dongxiang, 7 Bao’an, and 2 Tibetans. The team represented diverse backgrounds: 7 peasants, 23 “democratic personages” (*minzhu renshi*), 25 religious personages, 3 men of letters, 5 businesspeople, 17 social figures, and 5 cadres (CCP members). The document notes that certain “teaching schools” (i.e., groups of Muslims defined by their interpretation of Islam, such as traditionalists and Yihewani) were not satisfied with the land reform, although the names of the mosques that opposed the reform are crossed off in the document (Linxia dongqu tudi gaige minzu shiwu weiyuanhui [Linxia East District Land Reform Ethnic Affairs Committee] 1952).

By 1958, when the Communists commenced the struggle “against the privileges of feudalism and religion” (*fanfengjian fanzongjiao tequan douzheng*), cadres had destroyed many of the land-owning mosques and Sufi tomb complexes. The Gansu Provincial Party Committee issued a document on 27 October 1958 that stated that 32 of 53 Sufi tomb complexes (34.4 percent of the province’s total number) had been razed (Gansu sheng minwei [Gansu Provincial Party Committee] 1958: 3). Remarkably, the Grand Tomb Complex, the center of the Qadiriyya *menhuan* (Sufi solidarity) in China, which had 800 *mu* of land in the northwest corner of the city, survived, although all of its land was expropriated by the state and later used to build a park, featuring a Mao Zedong statue. The eradication or transformation of sites of communal identity has been a cornerstone of Communist religious policy particularly towards Muslims, as demonstrated, for instance, in the government’s treatment of Uyghur *mazars* (shrines) in Xinjiang, and the documentary practices that surround them (Thum 2014).

The Communists’ eradication of religious property, especially of *waqfs*, coincided with the reform of more institutional forms of *waqfs* in the Middle East (Hoexter 1998; Janssens 1951). In 1873, the French in Algeria had begun a series of attempts to abolish *waqfs* (Sautayra and Cherbonneau 1873-1874). In 1921, the British transferred *waqfs* in Palestine to the Supreme Muslim Council, which replaced the Ottoman Ministry of Waqfs. In that same year, the Soviets nationalized *waqfs* in the Crimea (Bogomolv et al. 2010: 80). In the 1950s, military régimes in Syria and Egypt abolished private *waqfs* (Baer 1962:172-5, 1969;

Ziadeh 1979: 66). According to Hallaq, the demise of the *waqf* under state law is a sign of the “structural death” of shari‘a (Hallaq 2009: 15-16, 471-473). Colonial law, in particular, viewed the provision of public goods through religious endowments as incongruous with social progress (Kozlowski 2008). In China, the CCP attacked the Ma family as landowners. The “death” of the *waqf* signaled the end of the twin forces of lineage and faith (i.e., Ma family rule and Islam) that had dominated public life in the northwest during the transition from empire to modern nation-state.

### From Stone to Paper

In many Muslim-majority societies, legal specialists produced rich textual traditions of juristic rulings and transactional documents covering all aspects of social and economic life, including endowments, in what Brinkley Messick has called “textual domination” (1993: 1). By contrast, the Hui practice of shari‘a is fragmentary, piecemeal, and often oral. The paucity of written sources of Hui practice of shari‘a is due to a number of factors, including low literacy levels in rural areas, reliance on local state institutions rather than qadi courts, and the Hui status as a small minority in an overwhelmingly Han-dominated society. The nullification of all religious law by state socialist law has further prevented the development of written shari‘a practices. While Hui shari‘a is threadbare, the bareness of that thread means that Hui, a religious minority in Chinese society, can have particular affective attachments to the idea of shari‘a. Rather than a weakness, its elasticity and embeddedness in Chinese customs imbue it with a degree of durability, and provide not just a basis but also demand for revival in the post-1980s reform period.<sup>11</sup>

Indeed, shari‘a content in surviving contracts from Gansu is, for the most part, quite thin. For example, an unpublished collection of contracts from the Linxia Prefecture Archives reveals a dynamic property market in early modern Linxia (Linxia zhou dang’anguan [Linxia Prefecture Archives] 2013). Comprising some 400 documents dating from 1819 to 1950, the majority of contracts touch on matters of land, including sales, “pawning” (*diandang*), land exchanges, and the renting of houses, watermills, oil presses, and threshing facilities. Most of these documents are agreements based on secular authorities. For instance, a land sale agreement by Ma Rushan, dated 18 November 1920, explicitly recognizes the Nationalist land registration system. The contracts

<sup>11</sup> On the Hui experience of shari‘a as one less of objective institutions and more of subjective and collective belief, see Erie (2016a).

demonstrate uniformity in content, identifying (1) the name of the parties, (2) the nature of the property in question (e.g., rented property, land to be sold or mortgaged, or households to be divided), and (3) the signatories to the agreement. The language of these contracts is formulaic; for example, “due to lack of money, [party A] today sells [property] to [party B].” Many contracts end with the statement, “for fear of lack of reliance, this [contract] is filed” (*konghou wuping ... lici ... cunzhao*), suggesting a nominal recognition by state law. As the contracts are between persons to convey land as a fungible good for material gain, they are not concerned with *waqfs*.

Other types of documents do evince the importance of Islamic morality in the everyday lives of Linxia Hui, however. For instance, one document dated to 1920 is a written pledge by Ma Baishe to stop gambling after he had been discovered dabbling in “the conveyance of forbidden money” on *jum’a* (Friday). The document identifies the pledge’s enforcement by the *xianglao*, meaning the elders of the mosque who administer its affairs, and imposes a fine of 5,000 bills, one sheep, and 200 bank notes (Linxia zhou dang’anguan [Linxia Prefecture Archives 2013: 47-48]).

The collection of documents from the Linxia Prefecture Archives is not an uncensored representation of its holdings. Linxia, called “Hezhou” in the pre-Communist period, was, after all, a major trading town on the historic Silk Road, where Tibetans, Turkic Muslims, Chinese Muslims, Han, and Mongolians, since the Song period (960-1127), traded lowland teas, highland horses, sheep hides, yak furs and butters, and salt. Such transactions are well represented in the official archives. However, the collection likely excludes other types of documents, including *waqfiyyas*, because official publications, even “internal” ones, cannot, as a matter of CCP doctrine, acknowledge the practice of religious-based transactions. Although Hui officials who had close contact with the Linxia Prefectural Archives told me several times that the archives did contain receipts of land sales in Arabic, I was not allowed access to these documents. Thus, whereas there is evidence of documents that touch on matters for which shari’a is the controlling law, these are mostly stored in private or closed collections. Over time, censorship, exclusion, and security diminished Hui knowledge about themselves and their own histories.

### Diasporic Documents

The Ma Lin documents are important because they evince an elite lineage’s property ownership, succession, and transfer in accordance with localized notions of Islamic law. Under current PRC law, however, they are legally void as

the property regime prohibits land used for religious purposes beyond the parcels returned to religious groups to reconstruct their places of worship and prayer. Courts will not enforce them, and the property to which they refer has been expropriated by the government. From the point of view of the state, the Ma Lin trope and any elements of shari‘a reflected therein are “dead letters.”

To analyze the documents, I interviewed Hui whose personal and family histories are intertwined with the history of the documents. These were either descendants of the Ma family or Yihewani members who were familiar with the history of the Mas, both those who had stayed in Gansu and those who had fled to Saudi Arabia. Such histories are now connected through family and doctrinal ties that have been strengthened in the reform period by the increased mobility of Hui. By studying the documents together with Hui, I began to appreciate the “afterlife” of the documents; they had become a means for remembering family history, doctrinal legacy, and Muslim communities beyond the cultural and jurisdictional boundaries of China.

Before describing the documents, I first sketch the transnational context in which they are framed and which, in part, they constitute. I do so with particular reference to the hajj, which was the vehicle for the “return” of the Ma Lin documents to China. As was customary among Hui, Ma Lin wrote his documents while preparing to participate in the hajj, which he completed in 1937, with the permission of Chiang Kaishek, the then leader of the Republic of China, who financed the journey. He returned on the eve of the Second Sino-Japanese War and met in Xi’an with his nephew Ma Buqing, the Hui cleric Ma Dehan, and Zhou Enlai (the de facto leader of the Chinese Communist Party or CCP) to discuss the establishment of a Second United Front between the CCP and the GMD. However, Ma Lin’s relations with both the CCP and his own kinsmen – in particular, a different nephew, Ma Bufang, the military governor of Qinghai – would sour.

The hajj – viewed by all Muslims as one of the five pillars of Islam, mandatory for those with the economic means to undertake it – has been one of the most important channels for Hui to connect with co-religionists in the Middle East and bring interpretations of Islam back to China, where they become the subject of Friday sermons, translation, and dissemination to pious Hui. In fact, most teaching schools trace their history to a hajj led by a founding member.<sup>12</sup> In the modern period, Hui began sending official delegations of hajjis to Mecca

12 Ma Laichi (1681-1766) founded the Khufiyya Sufi order in Linxia in 1734 after traveling to Mecca; Ma Qixi (1857-1914) established the Xidaotang, a collectivity of Muslims, in Lintan after trying to reach Mecca on the hajj and being turned back by war in Samarkand; Ma Wanfu (1849-1934) founded the Yihewani, the Chinese version of the Muslim Brother-

the year after Ma Lin returned, so in 1938, first organized by the GMD, then by the Japanese government in Manchukuo, and, finally, by a group of Hui students who had been studying at al-Azhar University in Cairo (Mao 2011: 375). The Communists permitted the first official hajj delegation in 1952, when sixteen Hui traveled to Mecca. In the reform period, an increasing number of Hui, including those in Linxia, have been able to perform the hajj (Bianchi forthcoming).

Given the centrality of the hajj to Muslims in China, it is not surprising that the Communists have tightly regulated the number of hajjis who are allowed to join the official tour. Nonetheless, Hui and Uyghurs have employed several strategies to circumvent hajj quota limits, from conducting illegal hajj trips on other countries' quotas to petitioning the China Islamic Association and the Bureau of Religious Affairs, which administer the hajj, to be allowed to accompany "sick" family members. In both the official and the illegal hajj, spiritual intentions are not the exclusive motivation of Muslims' movement, as Hui network with foreign Muslims for business purposes or reconnect with relatives who reside in Saudi Arabia. Most Hui I spoke to who have studied in Saudi Arabia say that up until the 2000s, the only Hui living in Saudi Arabia were Ma family members, descendants of Nationalist generals, and a handful of students. Their numbers have grown in recent years, however; at the present time, somewhere between 1,000 to 2,000 Hui reside in Saudi Arabia.<sup>13</sup>

One of the institutions that has enabled such contacts is the *waqf*. According to descendants of the Ma family warlords whom I interviewed, both Ma Bufang and Ma Lin established *waqfs* near Mecca in the form of guesthouses for Hui traveling from China to Saudi Arabia. Ma Lin established his in 1937, when he performed the hajj. Specifically built for hajjis from Linxia and Xining, Ma Bufang's guesthouse can accommodate some 200 people and has been managed by members of the Ma family who reside in Saudi Arabia. Delegations of Hui hajjis have stayed at the guesthouses, and although the Saudi government confiscated them after 9/11 as part of a general tightening of governmental policy over communal spaces, members of the Ma family told me that family members residing in Saudi Arabia continued to pay for the day-to-day expenses of the hajjis for several years.<sup>14</sup>

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hood, in Lanzhou after the 1886 hajj; and Ma Debao (1867-1977) and Ma Zhengqing (1878-1958) founded competing branches of the Salafiyya in Linxia after the 1936 hajj.

13 Encyclopedias on overseas Chinese published in the 1990s omit the Middle East (see e.g., Pan 1999; Sinn 1998).

14 According to my interviewees, the guesthouse was not the first *waqf* established by Hui in Saudi Arabia. Two clerics from Linxia – Qi Mingde (b. 1898), the founder of the Mingde

The Hui businessman, with whom I began this article and who received Ma Lin's trove in Linxia had seen their originals in Jeddah while staying with the current caretaker of Ma Bufang's guesthouse. While performing the hajj in 1989, he met this cousin, named Sarah (Ma Rongying, b. 1935). The daughter of Ma Shaoyuan and heir of Ma Lin's younger brother Ma Feng, in 1949, when she was fourteen years old, Sarah had fled Linxia with her mother, Mu'nisah, and forty other relatives, who smuggled the family estate documents out of China. They traveled to Taiwan, where they obtained passports to travel to Saudi Arabia, ultimately settling in Jeddah with financial support from Ma Bufang. Home-schooled by an older Hui woman, Sarah helped several other female family members run a small business. When her husband died in an accident, Sarah took over the business and became head of the household. Initially, she hosted family members from Linxia, but after returning hajjis told their relatives in Linxia about her, the number of nonfamily visitors grew over the years until entire delegations from Linxia and Xining were visiting her. Beginning in the 1980s, Sarah has greeted Hui hajjis, forging new links between Hui in northwest China and Hui overseas.

As the sole heir of Ma Shaoyuan, Sarah inherited the documents pertaining to the family's estate. Sarah had previously facilitated remittances between Saudi Arabia and northwest China that local Hui used for poverty relief and rural education. Money is only one object among many circulating between Hui in Muslim enclaves in China and those in the cities of the Arabian peninsula. For instance, the cache of papers Sarah mailed to the Linxia businessman two years after his hajj are examples of documentary forms that traverse with Hui across nation-state boundaries.<sup>15</sup>

The businessman's receipt of the documents caused a small stir in Linxia. News of the package reached a Hui reporter, who interviewed the businessman, and the two co-authored an article about the documents. However, the businessman did not share all of the documents with the reporter, and the full extent of the discovery was kept from the public. The businessman, himself an official and member of the province's association of returned overseas Chinese, showed all the documents to me when I visited him in 2012. The contents of the package from Sarah included not only Ma Lin's deed, which the reporter had seen, but also a business contract (1932), an accounts book (like the deed, dated to 1935), an original storefront ownership document (1948), and the *waq-*

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*menhuan*, and Fa Zhen – received funding from the Nationalist Lieutenant General Ma Fuxiang (1876-1932) to build a hotel after establishing a *waqf* in Saudi Arabia for Hui hajjis. Ma Fuxiang was well known as a benefactor of Hui education (Ding 1998), and some of his descendants told me that those donations took the form of *waqfs* (see also Jeong 2016).

15 Telephone interview, 20 January 2016.

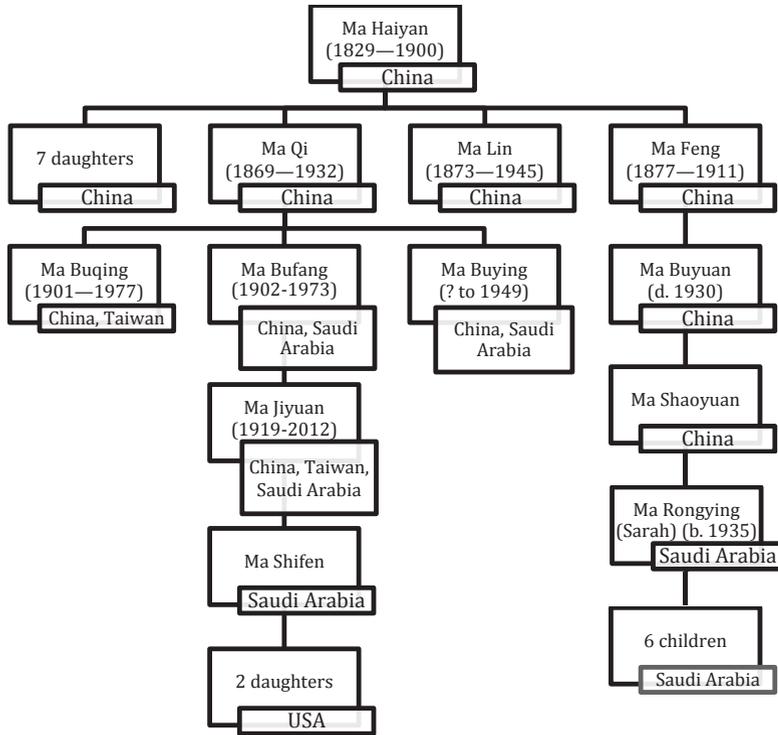


FIGURE 1 A simplified Ma family genealogy, modified from a drawing by Sarah's relative.

*fiyya* itself. While reading the documents, all of which are in Chinese, we were joined by his relative, an octogenarian cousin of Ma Bufang. For both men, the documents are proof of a golden age in the history of the Ma family, which has since scattered (Figure 1). It was an age during which the Ma family linked reformist Islam, of which shari‘a consciousness was one part, to military governance. The fact that their rule, in part through puritanical interpretations of Islam, entailed violence against non-Yihewani Hui, as well as Han and Tibetans, is often omitted in descendants’ reflections. Their omissions show that histories of violent pasts can be edited not only by official “amnesia” (Chan 2011; Fang 1990; Lim 2014) but also by kin-based memories.

The Ma Lin deed, which contains approximately 600 characters, describes Ma Lin’s family background, the property owned by his family, and the disbursement of property to successor generations. The first part of the deed reads as follows:

My family has lived for generations in Bie Zang in the western countryside of Linxia [Jishishan in Linxia Prefecture]. My deceased father,

Qing'an [i.e., Haiyan], was a magistrate of a prefecture (*fujun*), a position that garnered him fame. At the age of thirty, he entered military service and was known to be just and impartial. During the late Qing, he was prepared to lay down his life on the battlefield, and the state repeatedly bestowed upon him special favors. Moreover, Linxia bordered on the Southern Wastelands (Nan Huang), where the Fan Mu [Tibetans] live in large numbers. My father's sincerity and honesty inspired confidence. He managed all kinds of wealth; under his level blade, the entire clan felt at peace. He mediated a series of difficulties, for he possessed complete virtue. He had three sons, including me. The eldest was named Qi; his Chinese name was Ge Chen. The younger son was named Feng; his Chinese name was Wei Chen. He died of illness during the 3rd year, 12th lunar month, 11th day of the Qing Xuantong period [29 January 1912] at the age of thirty-three. We had seven elder and younger sisters who Father nurtured until maturity. We sons inherited Father's virtuous and commendatory official service. Gansu Province is the homeland of our elders, who have had friendships with the Meng Fan [Tibetans] spanning many generations. [We] recall the perfect virtue of Father, which has since been inherited by the sons. Father died over thirty years ago. We regret our inability to take care of our parents, and we cherish their memory with sorrow. We cannot forget their memory. As for me, I am unworthy and ill mannered, but I have inherited my late elder brother's [Ma Qi's] riches, which have aroused attention. I follow him in managing these riches, for to do otherwise would be a grave mistake. My elder brother died of illness on the 5th day of the 8th month of the 20th year of the Republic of China [1932], dying at the age of sixty-three years. As I have advanced in years, I have seen the younger generation become established [in society]. There are those from my elder brother [Ma Qi]: Ma Buqing, Ma Bufang, and Ma Buying, who have groomed a host of well-trained warriors. There are those from my younger brother [Ma Feng]: Ma Buyuan [马步元], who unfortunately died in the 18th year of the Republican period [1930] during the chaos of bandits, a loss of life that is profoundly sorrowful. And there are those from the rest [most likely children of Ma Lin's mistress(es)]: Ma Burong and Ma Buyuan [马步援], both of whom married. This year, grandchildren have been introduced to marriage partners, Ma Buyuan's [马步元] orphan [Ma Shaoyuan] has also been given a partner. The marriage of one's sons and daughters alleviates concern about the future. My father strove hard to create these fortunes in the hopes that the younger generation might prosper for a long time, that that generation might try hard to improve itself for the glory of those who occupy the front entrance and courtyard of the home without bounds.

The second part describes the property and its division:

The estate owned by the previous generation includes the following: in Linxia's Great Western Village (Da Xi Xiang), a total of 186 *dan* [a unit of measure equal to one hectoliter], 117 liters [of produce], three village gardens, a garden [behind a building], connecting small houses, two spring water mills, one oil storage room, three places for lower-grade wood, nine wooded and sandy areas, nine small courtyards of small rooms, one vegetable garden, four rooms along Linxia Nan Guan storefronts, two stores, three winter water mills, three home-based stores with nine and a half rooms, and one store. As for my charge, I divide 11 *dan* and 4 *dou* [a unit of measure equal to one decaliter] of tobacco land for Father's elder sister's line of seven families, as well as twenty-eight pieces of land along with fourteen Linxia Nan Guan storefronts. The remaining portions of the inheritance I divide into three parts, so that the future generations of sons and daughters may be self-sustaining. In what follows, each page details the contents of these divisions.

The following lines identify which properties are to be gifted to which descendants. The deed thus identifies Ma Lin's property as an estate to be distributed to his descendants. The deed is an *inter vivos* gift, but because Ma Lin had it written in anticipation of his dangerous journey to Mecca, knowing that he might not return to China, he sought to ensure the security of his heirs. Thus, the gift has shades of *causa mortis*. Although the gift-will hybrid potentially violates the shari'a rule that testamentary bequests cannot exceed one-third of the estate, the *fiqh* surrounding the hajj has well-established traditions of gift-giving in anticipation of the journey.<sup>16</sup> The deed does not establish an endowment for the family. Some of the property may have been *waqfs* – for example, the stores at Nan Guan. Nonetheless, the Hui official who received Sarah's package regarded the references in the deed to the sister's line and "daughters" as evidence that Ma Lin, in drafting the document, followed Islamic rather than Chinese rules. Still, Ma Lin apparently viewed the deed as a private agreement that would not necessarily need to be enforced by courts, for "what Ma Lin said was law" (*Ma Lin shuo de hua shi falü*).

16 To provide one touchstone, in al-Ghazālī's *The Revival of the Religious Sciences* (*Ihyā' 'ulūm al-dīn*), the second chapter of the seventh book in the first volume concerns the sequence of "external acts" from the beginning of the journey until the return, specifying that before performing the hajj, a pilgrim should pay all debts, arrange to provide for dependents, return any endowments for which he or she is trustee, and provide alms to the poor (al-Ghazālī 2010).

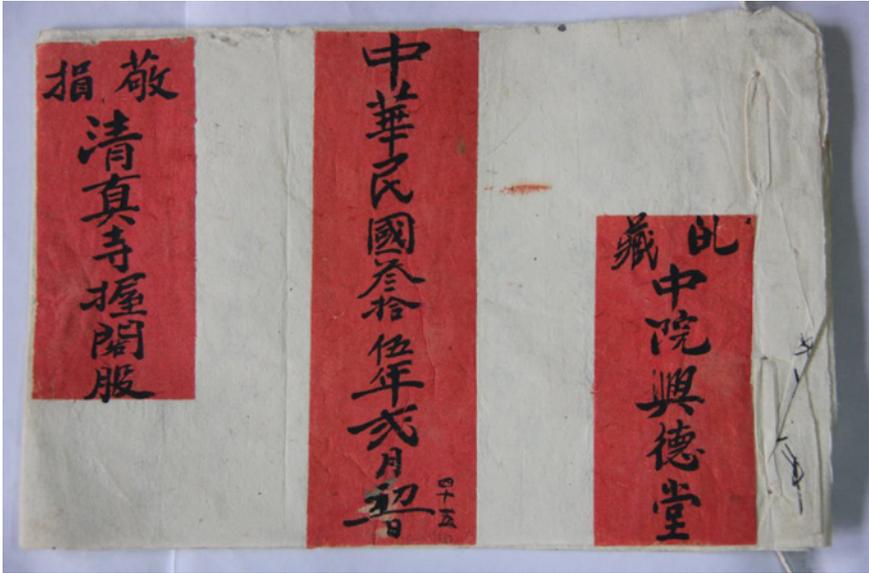


FIGURE 2 The cover of the waqfiyya.

The *waqfiyya* contained in the bundle of Ma Lin documents, which is an Islamic instrument, illustrates the influence of Chinese property relations in establishing a “public” endowment. Unlike the deed document seen by the reporter, which was a photocopy, the *waqfiyya* that Ma Lin’s relative showed to me was the original. It was in the form of a 14-page book. The cover reads “Bie Zang Middle Courtyard Flourishing Virtue Hall (*Xingdetang*)<sup>17</sup> / First Day of the Second Month of Year 35 of the Republic of China [1946] / Respectfully Donated the Mosque *waqf* (*qingzhensi wagefu*)” (Figure 2). The book specifies the charitable contribution of twenty-eight individuals, almost all with the surname Ma (the most common surname among Hui, because it sounds like the first syllable of “Muhammad”). The individuals’ names are listed vertically. Under each name are two types of contributions: The first describes the area of land, and the second lists the volume of grain donated to the mosque. Each

17 The Chinese character *tang* in the proper noun *Xingdetang* has been translated, following Freedman (1966), as “trust.” However, in addition to being a legal instrument held by one party for the benefit of another, a *tang* could also be a corporation or a property-holding hall, either physical or in name only. I thank David Faure and Helen Siu for this observation. The character has a wide range of meanings in Hui usage, with cognates such as *daotang*.

vertical line is marked with a seal, or “chop,” that identifies “Bie Zang” and “Zhongyuan gongyuan” (Middle Courtyard) as well as the twelve-pointed white star of the GMD – the official seal of Ma Lin.

In the course of my fieldwork, I showed the book to a number of Ma family members in Linxia, Jishishan (an area west of Linxia described in the *waqfiyya*), and the provincial capital of Lanzhou. The Hui responded to the book with surprise, perplexity, and – in a couple of instances – suspicion. The *waqfiyya* was a kind of text stimulus (Collier and Collier 1986: 99-116; Weller and Romney 1988: 21-28; Werner and Bernard 1994) that provoked discussion in ways I could not have foreseen. While discussing and debating the document with Gansu Hui, I realized that even if this *waqf* is no longer a valid legal entity, its documentary form elicited Hui reflections on family, class history, and ethno-religious communities. Many of my interlocutors were descendants of elite Hui landlords, some of whom had been targets of Communist campaigns, and yet the interviewees had aligned themselves to varying degrees with today’s Communist Party. Their rationalizations reflected conflicts in their commitments: in our conversations, memory emerged as a nexus of Party orthodoxy, family history, and Islamic piety.

After the prompt of the first line of the text, “Each village in Zhong Zui Ling, a village-town (*xiangzhen*) in Jishishan,” the document lists the donors to the mosque. One favored interpretation (among alternatives) proceeded along the following lines:

Ma Wuge rented out for Zhong Zui’s use two pieces of land. The total *mu* of land contains nine *dou*.<sup>18</sup> For each *dou*, three [parts] grain and seven [parts] millet [are to be donated].

Written in smaller script near the name of the donor is another name “Zhong Zui Ga Xizi,” meaning Little Xizi of the village Zhong Zui Ling (Figure 3). This general pattern – (1) name of donor, (2) secondary name, (3) quantity of surface area of land donated, and (4) volume of produce donated – is repeated for each of the following 27 donors, with minor variations.<sup>19</sup> In total, the Zhong Zui Ling donors contributed to the Bie Zang mosque 16 *kuai* (pieces) of land as

18 The *waqfiyya* uses a tallying system that approximates the Suzhou numbers (a pre-Communist positional system based on counting rods), a system largely unknown to my interviewees. For units of measurement, 1 *dou* equals 10 *sheng*, 1 *sheng* equals 0.96 quart (1.08 liters), 1 *dan* equals 100 *jin*, and 1 *jin* (or *catty*) equals 1.1 pounds.

19 The accounting format of the *waqfiyya* is similar to that of other land transfer documents in a Qing-era Linxia collection of non-shari’a contracts (Fan 1993).



FIGURE 3 A page from the waqfiyya, listing donors and amounts of donations.

well as 5 *dan* and 0.02 *sheng* of produce; and a second group of donors from a neighboring community gave 42 *kuai* of land as well as 10 *dan*, 9 *dou*, and 3 *sheng* of produce.

Each element of the pattern of property relations elicited different responses from the Hui to whom I showed the text. For instance, after telling me that the mosque mentioned on the book cover was Bie Zang Qingzhen Grand Mosque, which had been destroyed and moved to a different location in the 1990s,<sup>20</sup> a 70-year-old grandson of Ma Lin who is a cadre in Jishishan said,

Under the *waqf* arrangement, Ma Shaoyuan rented out a portion of his land to each farmer [e.g., Ma Wuge]. From the yield of this land, some portion was to be given to the mosque for its use, and the rest was to be retained by the farmer ... for every ten *dou*, three *dou* go to the mosque and seven to the farmer for his personal consumption.... The Ma family used the common people to make money. It was exploitation, but according to our religious law (*jiaofa*), it was legal.

The cadre contrasted property ownership and transfer in accordance with “religious law,” on the one hand, with property as means of socialist justice, on the other hand. His view, then, was that the two interpretations conflicted, and yet

20 The original mosque was frequented by Ma family members. It was where Ma Bufang first studied Arabic and learned to recite the hadith (Yang 2007: 128).

his own status would seem to have suggested otherwise. When I asked him why he joined the CCP, the very party that had fought against the senior generation of his family, he explained that, since he was a member of the local people's congress, the CCP recognized him as a "democratic personage," the same category employed in the 1952 internal party file, and this entitlement was the essence of inclusion in the socialist mold.

The cadre reciprocated the text stimulus by showing me a number of memorabilia from his own collection, including photographs of Sarah and him during the two times he performed the hajj, and a stack of letters from Ma Jiyuan, Ma Bufang's son, who fled in 1949 to Taiwan, where he became commander of the 28th Regiment of the Nationalist Army, and later moved to Saudi Arabia, where he took over management of the *waqf* guesthouse in Jeddah. In one letter to the official's mother, dated 19 February 1992, Ma Jiyuan wrote:

These past forty years, the overseas kin have experienced much change ... Mu'nisah and niece Rongying [i.e., Sarah] continue to manage their shop and are turning quite a profit. Their life is bountiful, and [Sarah's] children have already grown into adults. As for my family, including the elders who live under the same roof, there are some twenty people, who all reside in Jeddah.... Through the assistance of my Hong Kong pen pal, I am giving you US\$200, which your son [the official] will bring back with him under his account. This is a small token of my feelings. Please use it specifically for study, so that you can cultivate your talents ... Jiyuan.

As in other diasporic or exilic contexts (Appadurai 1996; Ewing 2003; Green 2008; Ong [1999] 2002; Small 2012), the flow of cash, images, and pilgrims generates feelings of belonging to communities that extend beyond the nation-state. The Ma family diaspora extends across space (Taiwan, Hong Kong, northwest China, Saudi Arabia), as it connects members across time through artifacts of family history.

This connectivity of memory to text was apparent during a discussion I had with the leadership of a Yihewani mosque in Linxia that had, in recent years, been receptive to influences from Salafism as well as pietist movements from South Asia. The group included the cleric, senior administrators, and the "local scholar" of the mosque community, also a cadre. The conversation centered on the familiar elements of donor, secondary name, surface area of donation, and volume of donated grain. Whereas the Jishishan Hui believed that the named donors were poor peasants tilling the land for Ma Lin as landlord, the Linxia Hui disagreed, arguing instead that they were wealthy landowners who none-

theless patronized Ma Lin, whose family background elevated him to the status of meta-elite.

The local scholar argued that the named donors were Hui and that the names in smaller characters beside them represented their Han tenants. As evidence, he cited one “small name” next to the named donor Ma Zhanhai, “Zhong Zui Ling Jiu Jiu Zi” (or Jiu Jiu Zi of Zhong Zui Ling village). A Hui, he said, would never be called “Jiu Jiu” (although I have seen this name on several Hui restaurants in my travels in the northwest). He thought some names were indicators of occupation; for instance, one “small name” is Jue Zhanjin. The character *zhan* means “rug,” indicating that the tenant was a weaver of rugs. The scholar opined that the names indicated the professions of craftsmen, workers, and farmers, and they were therefore “smaller” than the Hui landlords. The reversal of the familiar interethnic relationship between the majority non-Muslim Han and the minority Hui (Gladney [1991] 1996; Harrell 1995: 33) exemplifies the Muslim-centric view of Linxia Hui, a view that was supported by their reading of the *waqf* document, prima facie evidence of a period when Hui ruled the northwest. While many Hui I spoke to in reference to the *waqfiyya* privileged family lineage in their reflections, acts of religious piety and wealth accumulation were often framed with reference to the Hui – Han distinction. Reviving lineages signified broader resurgence of doctrinal interpretations of Islam and the Hui *en masse* as an “ethnicity” vis-à-vis their Han neighbors.

For the local scholar, the *waqfiyya* evoked a web of memories linking family, class, ethnicity, and public welfare. His grandfather had been a “capitalist” who once owned all of the houses along the street outside the mosque. After the others in the room had stepped out, the scholar shared the following with me:

Bafang [the Muslim quarter of Linxia] had a place called Twenty-Eight Courtyards, owned by Ma Zong, although everyone called him Ma Kuangye (*kuang* for “coal”). People would go to Ma Kuangye, and he would tell them to do things – to work a certain area of land or to build a bridge or a wall – and when they did so, he would pay them with a certain amount of coal.... He did not have any real control over them, but their relationship was a kind of patronage system, which he used to build granaries and the like.... He even built a bridge using cement that he had purchased from the British in India. They called it *yanghui* (lit. “overseas dust”). At that time, we had many foreign things. The bridge lasted until the 1970s; I saw it when I was little, but the Communists tore it down.

For the local scholar, the Ma family elite did not exploit farmers; rather, they maintained and improved infrastructure by paying the farmers to do the work. Although such community-improvement projects may not have taken the form of *waqfs*, the scholar pointed out that they were undertaken in much the same spirit as the construction of public utilities by the Ottomans or the Timurids. Also, the Ma family had not only spiritual links to the Middle East through their patronage of Yihewani and Sufi clerics, but also business ties to foreign suppliers and markets from Europe to Russia to the Indian subcontinent, a consequence of the Sino-Tibetan borderlands' importance to Silk Road commerce during much of the imperial period (Millward 1989; Min 2009). For many of the Hui with whom I spoke about the *waqfiyya*, the Ma Lin *waqf* brought to mind their own family's history, which was characterized by charity and piety – cornerstones of Hui understandings of shari'a. Hui interlocutors responded differently to the *waqfiyya* based upon the particular matrix of commitments that shaped their memories. Political affiliation and Islamic piety intersected in curious ways. Older cadres who reflected on their "Hui-ness" more in terms of family ties and common heritage and less in terms of daily religious practice and belief, were more invested in Party orthodoxy and more likely to critique property institutions practiced by their forebears, whereas younger cadres who belonged to revivalist strains of Islam, including neofundamental ones (which are nonetheless quietist and not anti-state), were more sympathetic to the kinds of property relations prevalent during the warlord period. Although some of this history challenges conventional wisdom, they nonetheless had a deep significance beyond that provided by the formal public sphere as defined by the modern state, its history, and its law.

### Conclusion: Religion, Property, and Law in the Afterlife

Legal scholars conventionally think of property in terms of social ties in relation to things; further, they view these triangulated relationships as taking the form of justiciable rights defined by the state. Yet, property can also define relationships according to rules that derive from authorities other than the state (Dresch 2012; Ellickson 2009; Hann 2006; Macfarlane 1998; Thomas 2004) – in the case of northwest China, from kin groups and religious communities. Beginning in the 1950s, the Communists targeted most of these nonstate forms of property as objects requiring reform. Further, PRC historiography defines these relationships through Marxist-Leninist categories (e.g., "democratic personage" and "exploitation"), some of which have been internalized by Hui. In studying the "returned" *waqf* document, however, Hui are able to remember

(however fleetingly) a text (however puzzling) in ways other than what is provided by the “official transcript” (Scott 1990) of Chinese history.

Hui reflections on the document open up memories contrasting with those of the state, memories that connect Hui to their kinsmen and co-religionists in the diaspora (cf. Ho 2006: 46; Jing 1996; Mueggler 2001: 7). Further, their reflections demonstrate that far from a simple Hui – state or even Hui – Han dichotomy, Islamic revival intersects with class and doctrinal interpretations of Islam. Nonetheless, Hui constructions of family history through evidence of shari‘a demonstrate blurring with Han Chinese forms whether in family organization or the way property documents reflect such organization. Hybridized forms of property are based not only on imagined social ties with overseas kin, but also on their material arrangements through remittances and *waqfs* that connect Hui to kinsmen beyond the territorial boundaries of China. Since the reform period, Han Chinese in southern China and Hong Kong as well as Chinese Catholics in mainland China have sought, generally for economic motives, the return of family and communal property illegally seized between the 1950s and 1970s. Material interests may also motivate northwest Hui, but their reflections on their lost property are not limited to the economic sphere. Intergenerational attachments to real property are acquiring renewed salience as Chinese Hui and diaspora Hui deepen their ties with each other.

Through reflection and remembrance, the *waqfiyya* has attained a kind of afterlife. Hallaq’s death-of-shari‘a thesis assumes that shari‘a had a “structure” (e.g., qadi courts, mufti councils, and textual canons), that colonization dismantled such structures, and that their “death” was final (Hallaq 2009). Following decolonization, however, the Middle East and North Africa have seen a widespread revival of shari‘a as a source of state law. The China case differs in important respects from that of the Muslim heartlands. Historically, Muslim authorities (both leaders and their texts) adapted to formal structures. While the Communists imposed socialist law in the 1950s and have sought to eradicate religious law, such imposition has been incomplete. Shari‘a has survived in northwest China over the past thirty years, in part because of its non-institutionalized nature, and is gaining renewed prominence in Hui lives.

For Hui, property documents represent status and home as they were before the Communists assumed power. Descendants view such documents not as objects imbued with *baraka* or blessing from God (a conventional descriptor for “the sacred” among Hui and Muslims elsewhere), but rather as traces of their ancestors’ wealth and piety. Hui descendants thus valorize the texts in the register of family in addition to that of religion. Today, through remittances from the diaspora, memories of wealth and power produce material linkages. The reconnection with agnates and co-religionists abroad is part of an Islamic

restructuring that includes Chinese versions of *waqf* (*wagefu* in Chinese). These *waqfs*, one of the major sources financing the Islamic revival, are proliferating despite formal legal prohibitions in a postsocialist property regime (Erie 2016b; Ma 2010). The growth of *waqfs*, albeit in a modified form, parallels its persistence in places where it was also radically altered, as in colonial Zanzibar (Oberauer 2008) and contemporary Turkey (Singer 2011).

Of course, descendants focus on select aspects of their collective memory. For example, past wealth can be regarded as a sign of virtue and diligence rather than as evidence of oppression over the non-elite. Over time, state censorship blocks certain forms of remembering and engenders an on-going “dismantling” in the selective recall of lineal descendants-turned-cadres. Pluralist approaches to property law analyze how property ensures human flourishing, yet often do so in reference to classical liberalism (Alexander 2011; Dagan 2011; Purdy 2010). Discussions about the Ma Lin documents show Hui interpreting their meaning not only in reference to a different value system – that of localized Islam – but also to the social organization of the family in diaspora. The view of property provided by the Hui perspectives on the *waqfiyya* runs counter to conventional approaches to studying property in society: rather than the state holding dominion over things, the afterlife of the *waqfiyya* resides in expanding networks of religious and kinship communities; property is a memory of home rather than a justiciable right; and instead of a place fixed in space and time, property obligations travel in smuggled documents.

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