

**Muslim Mandarins in Chinese Courts:
Dispute Resolution, Islamic Law, and the Secular State in Northwest China**

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ABSTRACT

An enduring set of inquiries in sociolegal studies investigates the relationship between state law and informal law. Research has examined *alternative dispute resolution (ADR)* and “popular justice” as intersections between state law and informal law. However, little attention has been paid to such questions in East Asian authoritarian states. I use the case of dispute resolution among Chinese Muslim minorities (the Hui) to re-examine the relationship between state law and Islamic law. Based on nineteen months of fieldwork in Northwest China, I argue that rather than state hegemony, the Hui case shows codependence between the types of law. Law is deeply embedded in social relationships between Hui leaders and counterparts in the Party-State. An analysis of personalistic relationships shows the ways in which religious and secular authorities access each other, transforming each other’s law to augment their own legitimacy, but not without the potential for violence. The China case illuminates dynamics between Muslim communities and states that are prevalent elsewhere, particularly in the post-9/11 period.

INTRODUCTION

Dispute resolution practices among Chinese Muslim minorities (in particular, the Hui) in Northwest China, reveal the intersection of the secular socialist legal system and an unofficial Islamic legal order. Recent findings in the study of law and religion (Kuru 2009; Stepan 2011; Fox and Akbaba 2013) and the anthropology of Islam (Asad 2003; Mahmood 2005; Agrama 2012) have shifted understandings of secular policies from neutrality (e.g., “the separation of church and state”) to actively shaping religious institutions, including law. This article extends these insights to describe the different effects that secular policies have on religious law and its authorities. Based on ethnographic data from the People’s Republic of China (PRC), I argue that instead of a “clash” or relationship of state hegemony, state law and Islamic law¹ are codependent. The reason for this is that both legal orders are embedded in social relationships between secular and religious authorities. In the course of dispute resolution, such relationships may transform the practice of law.

Rather than conceptualize law as anathema to personalistic relationships, both formal and informal law operate through such relationships. Cooperation and collaboration, however, can change law from the intent of its original legislators or jurists. Nonetheless, due to political and legal factors, relationships that enable or mobilize Islamic law, one example of informal law, may be fraught with anxiety, particularly in the post-9/11 period. The broader argument of this article is that dispute resolution among Hui calls attention to the social embeddedness of multiple sources of law in understanding the transformative effects of state law on informal law and vice versa.

In the wake of the events of September 11, 2001, governments have engaged the leaders of Muslim minority communities to address a number of concerns, from national security to religious freedom (Emon 2007; Rohe 2007; An-Na'im 2008; Ramadan 2008; Fadel 2009; An-Na'im 2014). The majority of research related to such collaborations has taken place in Western liberal states, where there are perceived established norms for transparency, "rule of law," and public accountability. This study examines such partnerships in an East Asian authoritarian state—the PRC. As in Europe, the United Kingdom, and the United States, officials in China coordinate with Muslim leaders to solve problems and handle conflicts, but they do so largely in a context of poorly implemented administrative law and weak procedural rights vis-à-vis the Party-State (O'Brien and Li 2005; Biddulph 2007; Lee 2007; Sapio 2010).

The study of dispute resolution among the Hui involves multiple lines of inquiry that are central to sociolegal studies. One revolves around *alternative dispute resolution* (ADR), a concept that encompasses an array of practices, and which is broadly defined as the facilitation of joint decision making by a third party in a nonbinding forum (Roberts and Palmer 2005, 156). Since the 1960s, ADR has gained traction in the US and other postindustrial Western states. A second set of inquiries stems from studies of nonstate forms of private ordering—alternately called "community/informal/popular justice," informalization, or delegalization, but hereinafter termed "informal law" (Abel 1982; Harrington 1985; Hofrichter 1987; Merry and Milner 1993; Riles 2002). The state and nonstate actors alike may view these processes, institutions, and norms as independent of official law (Ellickson 1991; Bernstein 1992; Feldman 2006; Richman 2006). Disputants apply informal norms or legal rules sometimes through third-party facilitation.

ADR and informal law may overlap in their functions, and ADR may apply nonstate informal law upon agreement of the parties. Each is considered a means for increasing access to justice and for lowering caseloads in an overworked court system (see for example, Sander 1979). As Marc Galanter has pointed out, however, they have different relations with the official legal system. The former may be integrated into the official system, but the latter is deemed as irreconcilable with state law (1974, 124–35).

Legal reformers have sought to integrate ADR into official legal orders, both domestically through instituted court-appended mediation as well as internationally in developing countries (Galanter 1985; Nader and Grande 2002; Senft and Savage 2003; Roberts and Palmer 2005, 7; Cohen 2006). Beginning in the 1980s, however, sociolegal scholars have questioned some of the assumptions underlying the popularization of ADR by arguing that it marginalizes the populations it was designed to support (Merry and Silbey 1984; Nader 1991). These critics view government cooptation of informal mechanisms as another way to maintain power inequalities (Santos 1980; Fiss 1984; Luban 1988; Roberts 1993). Data from China corroborates the state attempts to control nonstate authorities, particularly Muslims, but in the course of dispute resolution, the state's relationship to such authorities and their law is not one of state hegemony but rather mutual access and codependence.

Dispute resolution in Hui communities blurs the distinction between community-based mediation and informal law. Clerics mediate interpersonal problems among their followers in accordance with Islamic law. Although state socialist law does not recognize Islamic law, the Party-State, through a variety of arrangements, has incorporated clerics and other Hui leaders into the lowest rungs of the legal-judicial bureaucracy. Such

arrangements are far from facile, however. There are conflicts between Islamic law and PRC state law that find expression in the process of dispute resolution. I call Hui leaders who collaborate with officials and cadres *Muslim mandarins*. I use the term *mandarin*, most familiar in the imperial Qing context, as a modern analogue to underscore Muslim leaders' administrative relationship to the state bureaucracy. Muslim mandarins include clerics, Sufi *shaykhs* (masters), Hui elders, teachers, and other mosque leaders.

Relationships between Muslim mandarins and the local Party-State have gained increased importance in recent years following tension between certain Muslim minority groups and the Han majority in Northwest China. Popular media inside and outside of China frequently depicts the Hui as the “good Muslims,” as opposed to the Uyghurs (Turkic Muslims), the “bad Muslims” (Wang 2013; Gardner 2014). In recent years, some Uyghurs have allegedly committed terroristic acts against government installations and Han civilians. The Uyghurs, who consider the Xinjiang Uyghur Autonomous Region, the XUAR, their homeland, have suffered severe restrictions on their religious practice. The PRC is currently cracking down on those it perceives as Islamic militants in the XUAR. The Hui, however, are geographically disbursed throughout China, speak mostly Mandarin, and have undergone a long process of adaptation to Chinese culture since the first Muslims arrived in China in the seventh century CE (Gladney 1991/1996). Nonetheless, policies that are aimed primarily at Uyghurs are over-inclusive and also affect Hui mobility both within the country and internationally. The Hui, it should be stressed, are not mere lackeys. Their commitment to their communities may conflict with the dictates of the Party-State. Furthermore, they may use benefits derived from the

Party-State to achieve goals counter to those of the regime—for example, to spread consciousness of Islamic law.

Although mediation in China has experienced vicissitudes under Party-State rule, scholars have recently observed a “return” to mediation and have queried whether its use of informal law improves access to justice (see for example, Hand 2011). In this article I consider the experience of the Hui in using ADR-like mechanisms to intervene in disputes. Integrating so-called “Islamic ADR,” that is, dispute resolution that applies Islamic law (Shah 2010; Edge 2013; Keshavjee 2013), into the formal state legal system has proved difficult in secular states because of the presumed antagonisms between Western liberalism and Islamic norms. In China, ADR in Hui communities opens the door to clerics’ application of Islamic law, an unofficial law in China. Hence, the relationship between people’s courts and Muslim leaders who mediate disputes in their communities has proved strained (Ma 2006; Bai 2011).

The remainder of this article is organized into the following parts: First, I describe my methodology and data. Second, by exploring how pluralism is governed in the PRC, I provide an overview of ADR—specifically, mediation—and informal law in China and their relationship to the official legal system. I explain how religious leaders are enfolded into an expansive bureaucracy through personalistic relationships, and how they use their positions to mediate between secular and religious legal orders. Third, I develop two extended case studies that illustrate the divergent effects on informal law of uneasy collaborations between Muslim mandarins and the Party-State. I call the first type, which deals with the benign collaboration between cadres and clerics in communicating policy to non-elite Hui, the “formalization of mediation,” and the second type, which diffuses

conflicts that may otherwise snowball into broader communal strife, the “informalization of adjudication.” Each of these processes is an example of the secular project of delinking Muslim authority from Islamic law. Following the case studies, I explain the significance of Muslim mandarins in analyzing the imbrications of formal and informal law via personalistic ties within and beyond China.

METHODOLOGY

Between 2009 and 2012, while based in Linxia in Gansu Province, a city the Hui call “China’s Little Mecca,” one of the great centers of Islam in China, I conducted nineteen months of intensive fieldwork. I gathered ethnographic data from different communities in Northwest China to compare diverse strategies of governance in Muslim areas. In China, there are 10.6 million Hui, most of who are concentrated in Northwest China (Anon. 2013),² principally in Gansu Province, Qinghai Province, and the Ningxia Hui Autonomous Region (NHAR). Linxia itself has a population of 275,000 nearly 50 percent of whom are Muslim (Gansu sheng renkou pucha bangongshi 2012, 70–107). I collected data in Qinghai, the NHAR, and the XUAR, as well. For purposes of this article, I concentrate on the Hui although I make comparison to the situation of the Uyghurs where appropriate.

In total, I conducted over two hundred interviews, about half with Muslim mandarins and the other half with officials in legal, judicial, and public safety bureaus and cadres, as well as teachers, students, and merchants. To develop extended case studies, I selected several influential Muslim mandarins, defined by their leadership at “administrative mosques”³ or Sufi tombs (where founders of orders are buried). The core

data set of my study is the thirty-four mosques and the twenty-three main Sufi tomb complexes in Linxia.⁴ I collected interviews by use of “snowball sampling” (Atkinson and Flint 2003; Bernard 2006), which extended my network of interlocutors through the social connections of individuals I had previously interviewed. Interviews were semistructured, and whenever possible, I followed up with more informal interviews.

GOVERNING PLURALISM

One of the defining features of the Chinese legal culture is the presence of multiple sources of law and authorities that coexist or compete with state law (Zhu 1993; Zhao 2003; Tsai 2007; Hillman 2014). China’s extreme pluralism is a result of the diversity of communities, distinguished by faith, ethnicity, lineage, profession, and geography, which are subsumed within the modern nation-state. The rules that regulate behavior in these communities cannot be reduced to law. Ethical, moral, and customary rights and obligations interact with formal law in a number of settings, whether familial, commercial, or penal. Some of these sources are law, however, which I define, following Brian Tamanaha (2000), subjectively. Hui, for instance, call Islamic law *jiaofa* meaning “law of the teaching” or “religious law” and follow its rules for both social relations and devotional matters.

The PRC has responded to pluralism by taking a bifurcated approach to the formal recognition of nonstate procedures and substantive nonstate law as applied to minorities who both practice transnational religions and inhabit sensitive borders areas (e.g., Hui, Uyghur, Tibetans, and Mongolians). This approach affects the institutional design of dispute resolution mechanisms. On the one hand, the Constitution of the PRC

and a number of religious regulations guarantee freedom of religion.⁵ Clerics have rights under these regulations, and official recognition has implications for the Party-State's collaboration with clerics, as I discuss below.

On the other hand, the secular state dissociates religion from religious law. PRC law does not officially recognize religious law or the legal systems of ethnic minorities. PRC civil procedure law and conflicts of law exclude mention of religious law. Unlike US law, for instance, that recognizes Islamic law as foreign law, PRC legislation concerning choice of law remains in its infancy. The demarcation of religious and state authority is particularly fraught with secular anxieties in the postsocialist context (Bellér-Hann et al. 2007; Hann 2012). Economic transitions “after socialism” may conflict with ideological bulwarks against religion in the public domain.

Official PRC discourse omits discussion of Islamic law, but state law does allow for the limited recognition of the category “Hui customary law” (*Huizu xiguanfa*), an ethnicized and depoliticized concept, as interpreted by Marxism-Leninism. *Customary law* is the term applied to the law of each of China's fifty-five ethnic minorities.⁶ Whereas minorities in southeastern China have codified their customary law, and whereas people's courts in Amdo Tibet (i.e., Qinghai, Sichuan, and parts of Gansu and the Tibetan Autonomous Region) may refer to “Tibetan customary law” in making decisions, the Hui have been unable either to codify their law or to enforce it in courts. Though Hui customary law is referred to in official and academic sources (see, for example, Yang 2006), it is limited primarily to ritualistic matters, including dietary law, prayer, and ablutions. It largely excludes the body of Islamic law on social relations (*mu‘āmalāt*). Only in recent years have PRC scholars begun writing about Islamic law

although most such treatments apply to Islamic law outside of China (Gao 2004; Ma 2011).

In addition to the state's relegation of Islamic law to customary law, the Party-State established "regional ethnic autonomy" jurisdictions in the early 1950s that ostensibly permitted minorities residing therein to adjust national legislation to local circumstances (Kaup 2003).⁷ In practice, however, the people's congresses of autonomous regions (ARs) are legislative doldrums. Although two of the five ARs have significant Muslim populations (i.e., the XUAR and the NHAR), they have limited capacity to enact laws in accordance with Islamic law.⁸ Whereas relevant laws empower the legislative bodies of autonomous region governments to enact both autonomous regulations (*zizhi tiaoli*) and individual regulations (*danxing tiaoli*), to date, autonomous regions have not enacted a single autonomous regulation.⁹

Autonomous governments exist at each administrative level of the state, including all "autonomous areas" (ARs, autonomous prefectures, and autonomous counties). Bodies below ARs have had more leeway to enact autonomous regulations and individual regulations. However, such regulations do not necessarily codify nonstate sources of law. For instance, the Linxia Hui Autonomous Prefecture, which includes the city of Linxia, has enacted only seven local regulations. Of these, only one pertains to a subject addressed in Islam: *halal* food production.¹⁰ In Hui autonomous areas, people's courts expunge from the official record any mention of Islamic law made by the litigants. Islamic law in China has thus undergone "lawfare" (Comaroff 2001), by which state law determines which aspects of nonstate law are deemed agreeable to state ideology and

rejects the rest. Nevertheless, Islamic law continues to have traction in local Hui communities through leadership, guidance, and mediation by Muslim mandarins.

In addition to the official system, judicial, legislative, and public security organs have long-standing relationships with local Hui leaders. Such relationships, often predicated on reciprocal favors, are traditionally countenanced as *guanxi* (connections) and have been seen as an obstacle to building formal law (see for example, Shen 2000:23). *Guanxi*, however, shapes legal practice (Lo and Otis 2003:146; Potter 2002). While *guanxi* may increase transaction costs, it may also lower them by circumventing institutional and bureaucratic hurdles. In Hui communities, thick ties between cadres and clerics complicate state law's non-recognition of Islamic law (Figure 1).

[insert Figure 1 here]

Although state law ignores Islamic law, local officials have become dependent on Muslim mandarins to maintain social stability, a priority for the regime. This reliance was apparent during a riot in Linxia in late 2010. When a Hui man opened a brothel in the Muslim quarter of Linxia, thinly disguising it as a karaoke bar, Hui neighbors initially complained to the local police. After their complaints fell on deaf ears, they sought redress from their mosques' clerics, who deemed the behavior *ḥarām* (unlawful), and called upon their followers to peacefully protest. Once gathered before the bar, the crowd of several thousand enraged Hui began throwing bricks at the building and eventually stormed it. Unable to calm the rioters, the police appealed to the clerics who had initially galvanized the Hui townspeople. Two of the clerics who dispersed the crowd were later

charged with the crimes of destruction of property and “gathering the masses.” They were imprisoned for nearly two years.¹¹ Even though state socialist law does not recognize Islamic law or morality as a basis of urban order, and does not authorize Muslims to regulate their communities in accordance with their own law, the police relied on clerics to resolve the conflict. The contradictions that undergird the Party-State’s nonrecognition of religious law in spite of its dependence on religious authority figures (i.e., today an ally, tomorrow a detainee) inject uncertainty into cadre-cleric collaborations.

Making Muslim Mandarins

The cleric¹² is the chief dignitary of the mosque community and plays a central role in its wellbeing. He assumes the tasks of the *imam* (the one who leads prayer) and the *khaṭīb* (the one who gives the Friday sermon). Like clerics in Muslim communities in the UK (Ahmed 2008, 493; Bowen 2011, 413fn8), the Muslim cleric in China also assumes the duties of the *qadi* (judge) in addressing the panoply of the community’s legal concerns. Though he does not formally adjudicate, he is a proxy for the traditional *qadi*—for instance, in pronouncing divorces. Thus, the cleric is community leader, problem solver, public relations expert, storehouse of Islamic knowledge, and judge. Like the *qadi*, he is the touchstone of communitarian values (Geertz 1971, 50–51; Rosen 1984, 4, 11).

The cleric is the embodiment of Islamic traditions and, as such, exhibits tremendous charisma in his community. A number of factors define charisma, including performance of the pilgrimage to Mecca, study abroad in centers of Muslim learning (such as Saudi Arabia, Egypt, or Pakistan), mastery of Arabic, knowledge of the Qur’ān,

and lineage. The Hui recognize certain leaders as embodying grace from God. The cleric's knowledge of Islamic law is one source of his reputational charisma. In many instances, due to his high level of education and Arabic literacy, he has a monopoly on interpreting and applying the law.

Members of the mosque community tend to follow the instructions of their cleric whose authority could be unchallenged in the absence of checks by the mosque administration committee.¹³ One senior member of a Linxia mosque implied that the cleric's authority is unquestioned, stating, "Here, we have a problem. The faithful do what the cleric says." Although the speaker was describing Linxia, his statement has broad applicability to Hui communities. Such statements render explicit Hui behaviors and attitudes toward their clerics. It is precisely such loyalty that troubles the Party-State.

The legal issues that clerics and other Muslim mandarins mediate include those between members of his mosque community, conflicts between different mosques, and even his mosque's relations with governmental bureaus and Party organs. For interpersonal disputes among Muslims, the cleric addresses a spectrum of issues relating to family law, including marriage, divorce, inheritance, and property. To solve such disputes, he invokes rules from the revealed sources of Islamic law. He does so without an express grant of authority from the Party-State.

The Party-State accesses the tradition and charisma of Muslim mandarins by incorporating them into the lowest tiers of its legal-judicial apparatus. There are numerous religious and ethnic bureaus under the government that enfold Muslim mandarins into the Party-State, including the State Administration of Religious Affairs (SARA), the State Administration of Ethnic Affairs (SAEA), and the State Ethnic Affairs

Commission (SEAC). Bureaucracies also include organs of the CCP, such as the United Front Work Department (UFW). Collectively, like in such Muslim-majority societies as Egypt, these bureaus do the work of secular law, depoliticizing Islam through “the fashioning of religion as an object of continual management” (Agrama 2012, 24).

No clerics I talked to had joined the CCP. Many senior members of the mosque community had, however. Nonmembership did not prevent clerics from attending regular meetings and, in some cases, serving as advisors to governmental bodies and Party organs. Most clerics have formal membership in the organizations constituted under the Party-State that function as bridges between the Party and Muslim citizens.

In addition to the Chinese People’s Political Consultative Conference (CPPCC), the most visible of such organizations is the China Islamic Association (CIA). The CIA implements Party-State religious policies, consults when new laws and regulations are enacted, trains Islamic talent, produces scholarship, and develops Islamic curricula.¹⁴ Local Islamic associations are nominally under the CIA. However, their funding and directives come from the bureau of religious affairs at the corresponding local level and, ultimately, the relevant Party organ to which the bureau of religious affairs is attached. Most clerics in Linxia are members of their local Islamic associations, at both the prefectural and the municipal levels.

The CIA’s mandate has evolved over recent years, affecting its work both at the national and local levels. For instance, the exam to obtain certification as a cleric was historically administered by the local Islamic association, but in 2010, the rule changed in Gansu. As of the change, only the Central Islamic Association in Beijing has the

authority to administer the test. Several clerics said this restriction made obtaining certification much more difficult.

The CIA presents the one counter-example to the Party-State's exclusion of Islamic law from formal recognition. In 2001, as the PRC adopted global discourses on the "War on Terror" to use in its governance over Uyghurs in the XUAR, the CIA began disseminating an interpretation of Islam in accordance with socialism. First, it published a series of textbooks to be used in state-run Islamic schools, including one entitled *A Concise Course in Islamic Law* (*Yisilanjiao jiaofa jianming jiaocheng*). The textbook includes a chronology of Islamic law but stops before 1949, when the Communists established the PRC.

Second, on April 23, 2001, the CIA organized the Educational Administration Guidance Committee (EAGC), which comprised China's most learned clerics, who were conceived of as China's Muslim legal scholars and who were tasked to perform Qur'ānic exegesis to identify revealed sources consistent with socialism. The EAGC produced two intellectual projects. The first was a series of forty-six exemplary sermons, which clerics were instructed to emulate for their Friday service. The second was a series of specific legal opinions, called *tongxun* (lit., "communications"), which were functional substitutes of legal answers to questions known in Islamic law as *fatwas*. From 2001 to 2011, the EAGC produced six collections of *tongxun* to be distributed to mosques for clerics to use as reference material, but government authorities determined the EAGC had exceeded its authority and terminated the project.

The CIA's project of creating an indigenous Islamic legal authority marks a turn in China's approach to governing Islamic law and reveals different actors vying to

secularize Islam. Rather than designating Islamic law as “Hui customary law,” as has been the practice of the government, the CIA regarded Islamic law as a tool of governance. The secularist project was defined through religious law rather than in opposition to it. Yet with continued interethnic violence in the XUAR, any formal recognition of Islamic law was deemed too threatening by the CCP, and the project was terminated. I examine the EAGC experiment in detail elsewhere (Erie 2014) but note here that it demonstrates an attempt to define an “official” version of Islamic law. In line with recent reformulations of secular policies toward Islam, official forms of justice recast popular justice in its own image. The EAGC projects this image on Muslim minorities in China regardless of their ethnicity. Although many of the EAGC’s projects in the early 2000s that were intended to produce a socialist Islamic law through state-approved sermons and legal opinions arose out of concerns about antistate violence among Uyghurs, such techniques have been deployed among Hui, as well. Though the legal opinions have been revoked, copies of state-sanctioned sermons can be found in Hui mosques throughout Northwest China.

Influential clerics who have high appointments in the CIA usually have a corresponding position in the CPPCC. Muslims in Gansu call this “one set, two brands” (*yitaoliangpai*). Leaders across different teaching schools¹⁵ are represented in these quasi-governmental organizations, although there is a perception that, at the provincial and national levels, *Yihewani* (*al-Ikhwan*, or Muslim Brotherhood) dominate as “model clerics.” From my interviews with clerics in the contemporary Northwest, I surmise that in recent years, the Party-State is ecumenical in bureaucratizing clerics and has selected

for exalted positions in the CIA and CPPCC clerics from any teaching school who demonstrate charisma (Table 1).

[insert Table 1 here]

These relationships illustrate the interdependence of the secular state and Islam in China. Through licensing, formal appointments and informal consultations, meetings, training, continued education, propaganda sessions, conferences, and committee formations (each with its own reporting requirements), the charisma of Muslim mandarins is contained and channeled by the bureaucracies. Muslim mandarins are trained in Party policy affecting every aspect of “religious work,” from the types of textbooks used in mosque classrooms and the content of sermons to mosque financial management. Beyond socialization into a state-defined Islam, the bureaucracy includes Muslim mandarins as decision makers, informants, and even recipients of orders from various bureaus. By assuming diverse types of delegated powers of mediation, clerics as Muslim mandarins become partners with cadres in maintaining social stability in Muslim communities.

There are analogous partnerships between the local Party-State and Tibetan (Yeh 2003; Pirie 2013), Yi (Diamant 2001; Yan 2012), and Mongol (Bulag 2010) elites.¹⁶ Chinese secular policies separate ethnic groups from their legal orders, including their institutions of dispute resolution and textual jurisprudence. Although there are parallels with the Party-State’s treatment of Tibetan Buddhist law, the case of Muslim minorities is unique in that they adhere to Islamic law, a product of schools of transnational jurisprudence, rather than nation-state legislation.¹⁷

Mediating Legal Orders

In line with the demands of the Party-State, Muslim mandarins play an especially important role in mediating conflicts. To address these conflicts, the PRC has actively promoted extrajudicial ways to resolve disputes, some of which include reliance on religious authorities. China has a history of mediation that long predates the popularity of ADR in Anglo-American common law (Shapiro 1981, 160–61). As historian Philip C. C. Huang has shown, the Communists' use of mediation was a result of their dependence on local communities in Northwest China before 1949 (2006, 286). With the establishment of the PRC, Mao Zedong abolished the legal system but retained mediation as a means to control conflict in the population (Cohen 1966; Lubman 1967).

A basic tripartite structure, first established in Northwest China, remains the template for mediation throughout the country: “unofficial mediation” (*minjian tiaojie*), led by community leaders, “administrative mediation” (*xinzheng tiaojie*), organized under government officials, and “judicial mediation” (*sifa tiaojie*), which was integrated into the courts. Although the Party-State prioritized legal development over mediation in the 1990s, beginning in 2002, there has been a revitalization of mediation (Halegua 2005)¹⁸ as part of a governmental response to populist pressures as well as to the standard arguments of an overburdened court system (Liebman 2011).

Critics of the return of mediation argue that it is a response to an uptick in socially destabilizing petitioning and protests and that legal reform according to Western standards erodes the autonomy of the CCP (Fu and Cullen 2011; Fu forthcoming). They view mediation and informalization as a retreat from commitments to the “rule of law” (Minzner 2011; Pissler 2012). Such critics echo the sentiments of Laura Nader, who,

upon conducting fieldwork among the Zapotec in Mexico in the 1960s, concluded that aversion to conflict exemplifies a “harmony ideology.” She defined this as “an emphasis on conciliation, recognition that resolution of conflict is inherently good and that its reverse—continued conflict or controversy—is bad or dysfunctional” (1991, 2). As with previous assessments of Chinese mediation, its current critics argue that mediation depoliticizes conflict (Lubman 1999, 13, 25, 59; Katz 2009, 8, 15). Mediation in the contested areas of Northwest China functions to elicit consent among minority populations, particularly pursuant to the doctrine of “harmonious society” (*hexie shehui*), the theoretical contribution of Hu Jintao, former General Secretary of the CCP and President of the PRC.

In this context Muslim mandarins play a significant role. Although the Party-State does not recognize Islamic law, it coopts religious figures into the larger apparatus of dispute resolution through “people’s mediation.” The specific form this relationship takes is *people’s mediation committees* (*renmin tiaojie weiyuanhui*, or *PMCs*). Although Mao Zedong created PMCs, it was not until 2011 that they were given a basis in law.¹⁹ The purpose of PMCs has shifted over time. They were an instrument of political ideology in the 1950s, but by the 1990s their function was dispute resolution. Beginning in 2002, they have had a synthesis of functions.²⁰ They are used today in a wide variety of settings, including villagers’ committees in the countryside and residents’ committees in the cities (Read and Michelson 2008, 739). The use of PMCs has grown exponentially in the reform era. In 1981, PMCs mediated 673,936 cases, but in 2009 they mediated 5,800,144 cases (Zhu 2011, 303–4), a staggering increase of 760 percent.

THE FORMALIZATION OF MEDIATION

For historical and contemporary reasons,²¹ religious policy and governance varies across Northwest China. I will describe the operation of one form, what could be called “Islamic PMCs” and then assess how secularist pressures utilize Muslim authority while excluding Islamic law. In certain areas, the Party-State uses PMCs to address conflicts and prevent them from devolving into antiethnic or antistate confrontations. Among Hui communities, PMCs are most prominently found in the NHAR.

The NHAR has a population of 6.3 million, of whom 35 percent are Hui (Anon. 2013). These Hui enjoy religious benefits unthinkable to Muslims elsewhere in Northwest China. They have academic institutions and publication houses that promote Islam and closer ties with Arab nations through cultural exchange and trade. In Northwest China, where autonomy appears in shades, the NHAR enjoys “regional ethnic autonomy” at the level of an AR, theoretically at the same administrative level as a province. However, as noted above, administrative hierarchies are complicated by the central government’s reluctance to approve autonomous regulations issued by AR governments.

As of 2012, there were 3,423 PMCs in the NHAR for Hui and other ethnic groups, employing 21,888 mediators.²² There are 30 Islamic PMCs attached to mosques in the NHAR and a total of 7,800 Hui mediators, comprising 36 percent of the AR’s total. Among these, some 2,000 are “religious personnel” (*zongjiao renshi*) and members of the mosque administration committee.

Hui clerics and elder members of the mosque community become mediators through training sessions and educational propaganda led by cadres in legal and judicial bureaus. These governmental units employ clerics, *shaykhs*, and Hui elders as Muslim

mandarins. In rural Haiyuan County, with a population of 450,000, of whom 75 percent are Hui, the judicial bureau hired ten clerics in 2010, and the number was set to increase in the following fiscal year. The basic-level people's courts and grassroots mediation bodies also hire clerics. The funding does not come from the local government, however, but rather from the Ministry of Finance. In 2010, in Haiyuan County, one of the poorest counties in the NHAR, clerics were paid 50 yuan per case, 100 yuan for particularly challenging cases. Dockets include mainly marital disputes but also inheritance and property cases as well as torts, such as those arising from traffic accidents.

Mediation work in the NHAR exhibits what I call the *formalization of mediation*. Much like what Galanter revealed in his study on the *panchayats* in India (1989), the Chinese state has gradually incorporated into the juridical apparatus potentially alternative nonstate authority, in the form of Hui leaders. One of the functions of the formalization of mediation is not just to curb disturbances but also to communicate broader policy objectives to nonelite Hui through a face most familiar to them: a cleric or an elder. Simon Roberts noted that in-court mediation can be coercive because the face of the third-party mediator is the authoritative judge (1993, 462). In Islamic PMCs, the face of authority is not the judge as representative of the state but rather the Muslim mandarin, a charismatic authority in the local community.

A man I call Old Dong exemplifies the formalization of mediation. One of the most prolific and publicly praised mediators in the area surrounding the NHAR's capital, Yinchuan, Old Dong is a seventy-year-old Sufi Hui who is the director of his mosque's committee and the head of the mosque's PMC. The mosque is located in a hamlet of

approximately 10,000 people, all Hui. The town has several mosques, of which most are Sufi. This demographic and doctrinal pattern is replicated throughout most of the NHAR.

The mediation room is located off of the mosque's courtyard, opposite the prayer hall. Each wall is decorated with large posters, such as "Site of Legal System Propaganda Education" with photos of members of the mosque's PMC arm in arm with police conducting propaganda sessions in the mosque and class sessions in the mediation room itself. One image is particularly striking: a photograph of Old Dong holding a Qur'ān as if in deep study. Old Dong, however, can read neither Arabic nor Chinese. He tells me:

I never went to school. I worked mainly in the fields, doing manual labor for most of my life. I can't read Chinese or Arabic. But I speak Chinese, some Arabic, some Turkic, some Persian, and a little Mongolian.... I have been a judicial mediator for seven years. I have been hired by thirteen *danwei* [work units], including the court, judicial bureau, bank, traffic police, police station, and the people's congress.

Old Dong's illiteracy calls into question his capacity to apply any kind of law to a dispute. (In his defense, he mentions that the Prophet Muhammad himself was illiterate.) Old Dong's illiteracy highlights his discretion in handling cases rather than his capacity for legal reasoning. Despite his illiteracy, he has considerable status in his community. It is the combination of his lack of formal legal education and his grassroots charisma that is attractive to the Party-State and that makes him a model state-sanctioned Muslim mandarin.

Old Dong describes how he began as a mediator, a process of envelopment by bureaucracy:

I began doing this voluntarily—that is to say, without a mandate from the local government. But soon local officials came and began to notice the value of my work. They said, “Even though you have never studied law, you handle these problems.”

In 2003, his town’s traffic police nominated him as a people’s mediator, and since then he has been recognized as a mediator by over a dozen governmental departments and Party organs. Old Dong says he has not joined the CCP and has never been paid for his work. “I have never made money from it. But recently, I was given a reward of thirty thousand yuan!” he exclaims.

The procedure for people’s mediation may take different forms, including being modeled on adjudication. The two parties sit at tables opposite each other, one identified by the sign “petitioner” and the other “respondent.” Six members of the PMC sit at a large table before the parties, each with his or her own sign identifying the member’s position in the committee. Five of the PMC members are part of the mosque administration, the sixth is the assistant director, who is a police officer. Old Dong sits in the middle with the policeman to his left and another committee member to his right. Because all individuals in the room are Hui, they wear either a skullcap (for men) or a black scarf (for women).

The one exception is the police officer. Although he too is Hui, he wears his full police uniform and hat. Thus, despite the venue being people’s mediation, the police officer is a constant reminder of the state’s presence. He is both a symbolic fixture of state power and one of its “intimate collaborators” (Garces 2010, 463) with religious authority. As a representative of the socialist state, he delegates powers to Muslim

mandarins, but at the same time, Old Dong informed me, he ensures that state law, not Islamic law, is the governing law. He does not need to directly address the parties in dispute, nor does he himself need to vocalize state law. Old Dong speaks for the state. Just by being there, the police officer guarantees state interests.

In his seven years as mediator, Old Dong has personally handled 107 cases (for an average caseload of 15 cases per year). An examination of the cases he handled in 2010 at his town's judicial bureau reveals how the formalization of mediation through PMCs operates: Of the 16 cases he mediated that year,²³ 9 (56 percent) were traffic accidents. Of these, 3 were "major accident disputes" that resulted in the death of one or more people. The remaining 7 cases concerned housing loans (3), contracted land (2), an economic dispute (1), and "other" (1).

What he lacks in caseload, Old Dong makes up in success rate (defined as those cases that were not appealed). He claims 100 percent of the cases he mediated were met with satisfaction by both sides and were not appealed.²⁴ Appeal hypothetically takes the form of a lawsuit in the people's basic-level court. However, just as judicial mediation is rarely appealed in China (Fu and Cullen 2011, 34), so too is people's mediation rarely appealed. It is likely that disputants, not all of who can be satisfied by Old Dong's mediation work, "lump" their claims. Because of his success, Old Dong has been heralded by judicial and security organs and local media.²⁵

Procedurally, Islamic PMCs look much like adjudication in basic-level people's courts. State law has colonized informal justice (Merry and Milner 1993, 5). The formalization of mediation is not a "legalization" of mediation, wherein courts annex mediation programs, enabling mediation to fulfill the role of pretrial settlement (Senft

and Savage 2003, 328, 335). The effect of this formalization, however, is the same: Islamic PMCs are not a true alternative to official law.

Significantly, Old Dong, who is not trained in PRC or Islamic law, is a model people's mediator. He has been commended by the official propaganda organs more than any other Muslim mandarin I encountered. In the context of socialist law that is anathema to Islamic law, Islamic PMCs exemplify the seeming paradox of Islamic law in China. Whereas many Western states have established Islamic arbitration, Islamic PMCs maintain the appearance of "Islam-ness" while applying state law, not Islamic law.

The formalization of mediation acts on those members of Muslim communities who are both charismatic and nonthreatening to the regime. It functions most fully in communicating the benign collaboration of the local government by individuals respected by the community. Such arrangements are part of a larger approach to coopt clerics as agents of Party-State policy on religion and ethnicity. For instance, it was Hui clerics at the helm of the CIA who most vocally called for the enactment of an Anti-Terrorism Law days after a terrorist attack in Kunming in March 2014. Clerics in sermons often articulate versions of what Paul Rascoff calls in the US context "official Islam," ideological counter-radicalization to Islamic extremism (2013). Through the formalization of mediation and its production through local media, Hui clerics, in conjunction with police and public security officers, communicate law and policy beyond the parties to the dispute. In sum, the form of dispute resolution routinizes the charisma of Muslim mandarins, severs Muslim authority from Islamic law, and reproduces the Party-State's version of Islamic orthodoxy.

THE INFORMALIZATION OF ADJUDICATION

Whereas sociolegal studies have theorized the state's integration of informal law and ADR, they have given less attention to the effects of such integration on the formal legal system itself (Henry 1985; Harrington 1992; Norrie 1999). The case of Islamic law under Party-State governance provides an inroad to addressing this question. In addition to the formalization of mediation, another type of collaboration between Muslim mandarins and their counterparts in the local Party-State is what I call the *informalization of adjudication*. This type of collaboration, most prominent in Linxia but apparent also in other areas of Gansu and Qinghai, points to the primacy of personalistic ties between judges and Muslim mandarins over formal law. If, during adjudication, a Hui litigant makes an oral argument based on Islamic law that is integral to the matter under dispute or uses Islamic law as a basis of evidence (e.g., a wife arguing that because she and her husband had an Islamic marriage contract, they were validly married under Islamic law), a state judge may turn the case over to a Muslim mandarin. This process, which operates in the gray area of PRC procedural law, both results from existing social networks and further informalizes the judiciary.

In Hui communities, when disputes arise between family members or neighbors, they often seek mediation by a Muslim mandarin who applies Islamic law, but sometimes they go to the neighborhood office that has government-appointed mediators who apply state law. Only rarely does an unresolved dispute involve litigation in a basic-level people's court. If the judge is Hui and a disputant invokes Islamic law during the proceedings, the judge, who cannot opine on a matter of religious law, may use what could be called a "cleric hotline"; he or she calls a cleric to come and mediate the dispute.

Once the cleric takes over, Islamic law becomes the relevant law. The procedural law of judicial mediation is ambiguous concerning the legality of remanding a case to a nonstate authority. Given that the trial's "record of speech" (*tanhua bilu*) strikes any reference to Islamic law and that case records omit any use of clerics, court procedure suggests that the use of religious law contravenes civil procedure law.

A young cleric I shall name Nasim receives many of these cases. The process by which Nasim became a Muslim mandarin illustrates the informalization of adjudication. Nasim's knowledge of Islamic law and his personal charisma stem from both his own lineage (he is a third-generation cleric) and his study abroad. Upon returning to Linxia from Saudi Arabia in the 1990s, through sermons and mediating disputes, he began teaching his mosque community the importance of following Islamic law. Over the years, he gained a reputation as an expert in Islamic law that has spilled over into official arenas so that the local government took notice of his standing in the community. The provincial traffic police hired him as a "supervisor." Whereas other clerics in Linxia are hired by different public security and judicial organs on a temporary basis, Nasim's role is permanent, and he proudly shows a license proving his official status.

Officially, his expertise is limited to advising the provincial traffic police on vehicular accidents, but representatives from a variety of bureaus come to the mosque to consult him on matters touching on Islamic law that they encounter in their work. In return, Nasim, who is never paid for his services, has acquired a reputation as a resource for the Party-State's bureaucrats along with other benefits, such as having his mosque selected for a visit by high-ranking Party leaders. Judges also consult him on cases that touch upon Islamic law. Sometimes he is invited to court to mediate, and sometimes the

judge asks the disputants to seek Nasim at his mosque. Or they meet in a neutral environment, such as a restaurant. Usually, the referring judge is Hui and knows Nasim personally. Of the 92 cadres in the Linxia City People's Court, 40 are Muslim. Social ties among coreligionists transcend the Party-State's attempt to demarcate secular and religious domains. Government offices are zones of atheism, and Hui cadres cannot pray at work. But when these cadres call on their cleric, they do so both as representatives of the Party-State and as members of the mosque community. Nasim relates:

I may come across issues relating to inheritance, marriage, and divorce. The procedure of referring a case back down to the local religious authority is, in fact, illegal. The case should not be taken out of the state venue. Once the complaint is lodged there, it should be decided by that authority. This has been going on for many years. Official PRC court decisions will not only exclude any mention of religious law, but there will be no instances of even remnants of Islamic law in decisions, or references of any kind, however vague.

Here there is a direct conflict between informal and formal law. Nasim characterizes as unlawful the use of a cleric as temporary judicial mediator, but the cleric is used despite the law's prohibition. Article 95 of the 2012 amended PRC Civil Procedure Law allows a court to "invite" (*yaoqing*) a governmental unit or individual to "assist" (*xiezhu*) with mediation. Though it is unclear whether a cleric can be considered an "individual," the statute indicates that the court is still in charge of the mediation.²⁶

Furthermore, according to article 33 of the 2010 Mediation Law, the relevant people's court may review the agreement that results from mediation by a PMC. Judicial oversight does not occur in the informalization of adjudication, however. Rather, the

Muslim mandarin takes over the case. Nor do Muslim mandarins draft a mediation agreement; the entire process circumvents any recording. Complicating the notions of the authorities' "legalization" of interpersonal and wider social conflicts (Diamant, Lubman, and O'Brien 2005, 3), the referral of cases to religious specialists shows the dramaturgical purpose of law. Law provides a veneer for the thick personalistic ties that otherwise blur the divide between official and unofficial legal venues.

The informalization of adjudication is characterized by relationships between the Hui elite and government officials that are marked by discretion rather than transparency or official record. The work of mediating disputes is done "backstage," to use Erving Goffman's apt phrase (1959/1969). The "back room," not the courts, is often the site for brokering power between stakeholders (Martin 2013, 628). As Ling Li has written, "[m]ore seems to take place behind courtrooms than in them in litigation in China" (2012, 853). Meanwhile, the courtroom is the venue for the public performance of the law (Trevaskas 2004). In this sense, the formal legal institutions of secular "rule of law" are dependent on the informal authority of Muslim mandarins and their capacity to mediate in accordance with Islamic law.

Although the informalization of adjudication cannot be officially recognized, it is an open secret, a conspicuous indirection. Within this arrangement, Nasim seeks to educate his mosque community and others about Islamic law. Linxia Muslims of all teaching schools come to his quarters to ask him to mediate problems. Thus, since secular law and its institutions depend on Islamic authority, Muslim mandarins use the social capital conferred through such delegations to spread Islamic law consciousness.

Nasim's visibility to both Muslim followers and officials (overlapping pools of clients) brings with it no small degree of danger. He whispers:

The CCP cannot know that I am explaining Qur'ānic law to members of my mosque. And it's not even enforcing Qur'ānic law, but merely explaining it.

Much of Qur'ānic law is at odds with state law. If they knew I was doing this, they would say I was interfering with the judiciary.

From the view of the Party-State, Nasim can work only to put disputants back on a course where they can negotiate their own problem. In this, his work parallels that of a *qadi* (Rosen 1989, 61), the crucial difference being that clerics cannot enforce the law. Consequently, Islamic law operates here not through implementing institutions but through continual education, instruction, sermon, and prayer.

As many commentators have observed, weak courts remain the Achilles' heel of legal reform in the PRC (Lin 2003; Clarke 2008; Peerenboom 2009). Most critics point to the CCP's oversight of people's courts as invalidating their independence. Courts have another set of relationships, specifically, their reliance on local authority figures to mediate claims. As a normative point, although such relationships deviate from Western "rule of law" prescriptions, it is arguable whether such reliance is a weakness or a strength. Indeed, scholars have analyzed connections between the CCP, lawyers, and judges as "political embeddedness" (Michelson 2007; Liu and Halliday 2011). Such social connections have generally been viewed as a net good, as a resource and means of protection for lawyers. So, too, do Muslim mandarins accrue benefits from collaborating with local officials.

However, Muslim mandarins must be wary of being perceived as “too close” with cadres and thereby losing credibility in the eyes of nonelite Hui. In serving two masters—the followers of the Prophet and the members of the Party—they must toe a line that is continually shifting, as demonstrated in the riot against the Linxia brothel. The potential for violence percolates beneath collaborations, creating suspicion for both Muslim mandarins and their official counterparts. The ability of Muslim mandarins to straddle the demands of the Party-State and those of their communities is even more precarious among Uyghurs. For instance, on July 30, 2014, Juma Tahir, the *imam* of the largest mosque in the XUAR and head of the Kashgar Islamic Association, was stabbed to death allegedly by radicalized Uyghur teenagers (Anon. 2014) who believed the *imam* owed loyalty more to Beijing than to his own people.

Though partnering with cadres may benefit Muslim mandarins, their collaboration with the Party-State, through political embeddedness, may actually work as a means of government control. The informalization of adjudication operates to keep tabs on those Muslim mandarins who are gifted based on their character, achievements, kinship ties, and regional reputation and thus might be seen as threatening to the regime. Conversely, as state law is not a privileged basis of legitimacy in China (Bernstein 2008), connections with those who have the capacity to influence others are a powerful source of maintaining legitimacy. In other words, authoritarianism is not simply top-down coercion but operates through a number of nodes of authority. In Hui communities, the local Party-State thus relies on Muslim mandarins.

THE DYNAMISM OF INFORMAL LAW: THE CHINA MODEL?

The treatment of informal legal orders, such as that of Islam, under state secular laws is one of the central questions of the post-9/11 period. The perceived incompatibility of Islamic law with liberal norms in the West has incited intense intellectual efforts at accommodation (see for example, March 2009; Quraishi-Landes 2011) that are at the center of designing institutions to incorporate Islamic law into secular justice systems. The arbitration model, used in the UK and Canada, for instance, has proven controversial as women's rights activists have raised questions about gender equality under such institutions (Bowen 2011; Boyd 2013). Likewise, Tamir Moustafa (2013) has argued that the binary and mutually exclusive way in which Islamic law and liberal law are conceived in Malaysia is more a factor of institution building than of any inherent conflict. India has devised a "semi-confessional system" whereby secularly trained Anglo-Indian judges apply the Islamic law of personal status in civil courts (Sezgin 2013) although the enactment of a Uniform Civil Code that would abolish such state-enforced legal pluralism is hotly contested (see, e.g., Agnes 2007).

In China, socialist doctrine fails to recognize Islamic law. Hui disputing reveals that it is not formal institutions that do the work in reconciling state law "from above" with Islamic law "from below" but rather systemic informal relationships. Whereas Islamic PMCs function to reproduce state power at the local level and do not reconcile Islamic law with socialist state law, the informalization of adjudication is the process through which cadres and clerics determine the scope and applicability of state versus Islamic rules. The kinds of relationships between judges, police, and judicial bureaucrats, on the one hand, and Muslim mandarins like Nasim, on the other, are not purely ad hoc nor do they necessarily fall within the ambit of official responsibilities from positions

within the CIA or CPPCC. Rather, they gain traction in dispute resolution largely beyond official responsibilities and entitlements by law or regulation, where *guanxi* or “unofficial” connections take over.

Guanxi is routinely criticized as inviting corruption (Smart and Hsu 2013; Li 2011) particularly in the current anti-corruption campaigns led by General Secretary of the CCP, Xi Jinping. Whether or not personalistic relationships are “bad” or “good” for legal development depends to some measure as to whether arrangements attain their goals. The formalization of mediation addresses local conflict and keeps disputes out of courts by mobilizing Muslim authorities like Old Dong. A secondary function ensures that such disputes are not resolved with respect to Islamic law. The process appears to achieve success in obtaining these respective aims (Table 2). Likewise, the informalization of adjudication takes disputes out of courts and delegates mediation to clerics like Nasim. The crucial difference is that Nasim uses such delegation to apply Islamic law rather than state law. There are unintended consequences to both processes. Learned clerics in the Northwest point out that Old Dong is not an Islamic authority and question the legitimacy of such hybrid Islamic-socialist mechanisms. Sophisticated actors such as Nasim spread Islamic law knowledge, which simultaneously undercuts and supports the informalization of adjudication.

[insert Table 2 here]

Addressing disputes and keeping them out of the formal court system may not necessarily be a means to justice, however, particularly from the vantage of Muslim piety

where Islamic law is controlling. The formalization of mediation and the informalization of adjudication have different effects on informal law. In the former, dispute resolution conducted by Islamic PMCs is emptied of Islamic law substance. The latter process valorizes the capacity of Islamic law to address conflicts all the while maintaining its exclusion from official recognition. Each process involves secular law and policy actively shaping Islamic law—by occluding it from gaining traction in the public sphere but using it (in some instances) to minimize social conflict. In the informalization of adjudication, skilled mediators can apply Islamic rules but enforcement depends, elliptically, on the piety of those who seek such forms of redress.

ADR-like institutions in Northwest China are one instrument of the Party-State's rule over Muslim minorities. The study of dispute resolution in Hui communities points to the “soft power” aspects of mediation in the course of the state's regulation of non-state authorities. In other words, neither Michel Foucault nor his Maoist interlocutory in their 1971 debate was correct in opining about “popular justice,” either that it is encumbered by the state (the Foucaultian position) or that it embodies the revolutionary will of the people against the state (the Maoist counterposition) (Foucault 1980, 1–4). The case of Muslim mandarins shows power running in multiple directions and its benefitting or constraining multiple parties.

The case of Hui disputing sheds light on the relationship between state law and informal law, more generally. Writing over forty years ago, Sally Falk Moore demonstrated that where multiple regulatory regimes interact in the same social field, “legal, illegal, and non-legal norms all intermesh” (1973: 723). More recently, the sociologist Boaventura de Sousa Santos has called this process “structural

interpenetration” (2002: 88). In Hui disputes, however, normative pluralism is not as pronounced as procedural blurring, particularly in the informalization of adjudication. Much of disputing is driven by the deep pragmatism of the state’s legal and judicial bodies. In short, human agency produces the relationship between state law and Islamic law, however complicated by a state ideology or the letter of the law that refuse to give legal status to religious law.

The codependence of formal and informal law in Northwest China thus relies on social connections and pragmatic decision-making of actors on the ground. The ways in which China approaches disputing and governance, more broadly, in plural societies has practical importance (see for example, deLisle 2010). An arena for increasing empirical research is collaborations between Western states and domestic Muslim leaders in communities that feature a large number of Muslims for purposes of dispute resolution, surveillance, and information gathering (Ferrari 2005; Tyler et al. 2010; Aziz 2014). Police in U.S. cities, for instance, have looked to *imams* and elders as “relationship-building leaders” in “community-policing” programs (Hakeem et al. 2012, 36). A concern in recent years has been “homegrown” terrorism perpetrated by nationals who have been influenced by antistate propaganda, often in the form of online media, as allegedly motivated the killer of the Uyghur *imam* Juma Tahir. In such community policing programs, relationships may transform law’s categories.²⁷ While the Hui are not directly the object of state counterterrorism policies as is the case of the Uyghurs, the pre-existing relations cadres have with Muslim mandarins are nonetheless mobilized for purposes of collecting information about developments within Muslim communities in

China. Some well-educated clerics opt out of the system for a number of reasons, including discontent from being “accessed” by the local Party-State.

The ADR processes I have discussed suggest that in the grayed out margins where formal law meets informal law, collaborations may transform formal law. In the example of the informalization of adjudication, procedural requirements that a case cannot be “remanded” to a nonstate authority once it has been lodged within a people’s court are ambiguous and human actors who are under pressure from seniors to address grievances, further informalize rules by handing over disputes to Muslim mandarins. When social ties shape the practice of law, such arrangements are flexible and may benefit parties to the dispute; however, they can also potentially encourage abuses of justice in a race to the bottom.

More research is needed on the effects of state secularist policies and its pragmatic concerns of public safety and security on Muslim communities and their rights under both state law and informal legal orders, such as that of Islam. Although the formalization of mediation confirms sociolegal theory about the state’s colonization of informal law and dispute resolution processes, future research can determine the extent to which the informalization of adjudication has equally colonized official law in the post-9/11 period of anxious collaborations between the state and Muslim authorities.

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Figure 1. Law-Guanxi Matrix

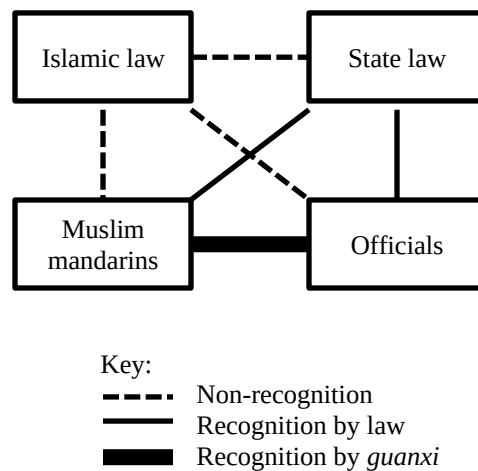


Table 1. Bureaucracies in the Muslim Northwest

	Government			CCP	Government-Constituted Organizations	
National-level entity	State Administration of Religious	State Administration of Ethnic	State Ethnic Affairs Commission	United Front Work Department	Chinese People's Political	China Islamic Association (Educational

	<i>Affairs (SARA)</i>	<i>Affairs (SAEA)</i>	<i>(SEAC)</i>	<i>(UFWD)</i>	<i>Consultative Conference (CPPCC)</i>	<i>Administration Guidance Committee)</i>
Supervening entity	State Council			Central Committee of the CCP		SARA
Entity at relevant administrative level*	Bureau of Religious Affairs	Bureau of Ethnic Affairs	Ethnic Affairs Commission	UFWD	CPPCC	Islamic Association
Jurisdiction and function	All matters pertaining to the officially recognized 5 religions	All matters relating to the officially recognized 56 ethnicities	Implement policy in ethnic minority areas	Coordinate relations between CCP and non-Party elite	Represent CCP and non-Party leaders, including religious leaders	Implement policies on Islam
Local management of Muslim mandarins	Approve appointment of clerics, approve election of mosque committee, establish mosque curricula, conduct training sessions		Train Hui cadres, supervise mosque activities and mosque space	Train Hui cadres, consult Hui leaders on local problems		Publish model sermons, hold sermon competitions, establish mosque curricula, produce research for Hui consumption

*Each bureau exists at every administrative level (e.g., autonomous region or province, prefecture, county, and city) except for the Educational Administration Guidance Committee (EAGC), which exists only at the national level and convenes in Beijing.

Table 2. Comparison of Types of Collaboration

	Formalization of Mediation	Informalization of Adjudication
Legality under PRC law	Legal under 2010 Mediation Law and administrative regulations	No legal basis
Presence of state law	Excessive	None
Presence of Islamic law	Low	High
Visibility in Muslim communities	High	Low
Functions	Represent successful relationship between Party-State and Islam, keep minor cases out of courts, communicate state policies to Hui masses, sever Islamic authority from Islamic law	Tap Islamic law knowledge, keep minor cases out of courts
Compensation for Muslim mediator	Per case or monetary rewards	None
Documentation	Cases recorded and archived	None
Audience	Parties to dispute and broader Muslim community	Parties to dispute

¹ “Islamic law” is the common English translation for *shari‘a*, the legal and ethical system to which Muslims are beholden. It includes the Qur’ān and the *sunna*, which takes the form of *hadiths* (reports) on the sayings and deeds of the Prophet Muhammad. In addition to the revealed sources, there are additional forms of reasoning and consensus that are conventionally considered “Islamic law” (Hallaq 2009).

² According to the 2010 national census, there are 23.1 million Muslims in China, distributed among the ten officially recognized Muslim ethnic groups. The official number is most likely low, however, since it fails to consider Muslim Han and Muslim Tibetans, among other converts.

³ *Administrative mosque* is a local Hui term, not a governmental designation. It refers to the mosque where members of smaller mosques go to attend the Friday prayer.

⁴ I conducted the interviews primarily in Mandarin. As my proficiency improved in the local Bafanghua dialect (a creole that incorporates Arabic, Farsi, Urdu, Tibetan, Mongolian, and other dialects of Muslim ethnicities, including Dongxiangyu and Salarhua), I was able to converse in it.

⁵ See, e.g., article 36 of the Constitution of the PRC, adopted by the National People’s Congress, effective December 4, 1982, revised March 14, 2004; article 11 of the Regional Ethnic Autonomy Law of the PRC, passed by the National People’s Congress, May 31, 1984, amended February 28, 2001; and the Religious Affairs Regulations, passed by the State Council on June 7, 2004, amended March 1, 2005.

⁶ In the 1950s, the Party-State conducted a nationwide “ethnic identification” project, which resulted in the formal recognition of fifty-five groups who, as a result of their status, benefit from preferential policies in such areas as education and employment.

⁷ See article 115 of the Constitution of the PRC and article 4 of the Regional Ethnic Autonomy Law of the PRC.

⁸ Pursuant to article 15 of the Regional Ethnic Autonomy Law, the people’s governments of all ethnic autonomous areas are subordinate to the State Council, and pursuant to article 67(8) of the PRC Constitution, the Standing Committee of the National People’s Congress has the power to

annul the local regulations of autonomous regions.

⁹ The Inner Mongolia Autonomous Region Regulations on People's Prairie Management, issued by the Inner Mongolia Autonomous Region People's Congress, effective January 1, 2005, were passed not as an autonomous regulation, but as a "local statute" (*difang faqui*), which has a more limited scope of authority than an autonomous regulation but does not need to be approved by the National People's Congress.

¹⁰ The Linxia Hui Autonomous Prefecture Halal Food Production Administrative Measures, passed by the Fourth Meeting of the Eleventh Session of the Linxia Hui Autonomous Prefecture People's Congress, April 11, 1999.

¹¹ The maximum sentence, I was told, for the crimes was three years in jail. The term of the senior cleric who organized the protest was commuted to one year and ten months, although his health suffered in jail and he never fully recovered.

¹² The typical cleric is a married Hui man in his forties. (Only a handful of clerics I met in Ningxia were female, so I will use the masculine pronoun when referring to a cleric.)

¹³ The mosque administration committee is a group of three to five male elders who constitute the conservative counterweight to the cleric. They enjoy official status under PRC religious regulations; they are empowered to mediate disputes and to hire or fire a cleric.

¹⁴ Constitution of the China Islamic Association, passed May 11, 1953, revised May 11, 2006.

¹⁵ Teaching schools are communities of believers defined by their doctrinal interpretations of Islam. They include traditionalists, Sufis, modernists (*Yihewani*), and neoconservatives (*Salafiyya*).

¹⁶ This process is not unique to China (see, for example, Antoun 2000).

¹⁷ Almost all Hui follow the *Ḥanafī* school of jurisprudence. According to *Ḥanafī* jurists, legal prohibitions of Islam do not apply to territories outside the "abode of Islam" (Abou El Fadl 1994, 174). In 1930, the editor of a leading reformist journal in Egypt and an expert on Islamic law opined that China was, in fact, outside the "abode of Islam" (Halevi 2013). Ironically, most Hui are not aware of classical *Ḥanafī* rules and thus aspire to follow Islamic law in its entirety.

¹⁸ See article 1 of Several Provisions of the Supreme People's Court on Hearing Civil Cases Involving Mediation Agreements (hereinafter "Several Provisions"), promulgated by the Supreme People's Court on September 5, 2002, which made mediation agreements enforceable as contracts in people's courts.

¹⁹ Article 7 of the People's Mediation Law of the PRC, issued August 28, 2010, by the Standing Committee of the National People's Congress, effective as of January 1, 2011, defines people's mediation committees as comprising three to seven members with one person serving as director and, optionally, one or more people serving as deputy director(s). The law specifies that in ethnic minority regions, PMCs should have ethnic minority members.

²⁰ These transitions are reflected in the documents that have formalized PMCs under law, including the General Rule on the Organization of the Temporary People's Mediation Committees, promulgated by the Administration Council on March 22, 1954, the Regulations on the Organization of People's Mediation Committees, promulgated by the State Council on May 5, 1989, and the Several Provisions.

²¹ Though official histories of Linxia focus on its serving as the base for the "Ma Family warlords," who ruled Northwest China from roughly 1910 to 1949, the relationship between the Ningxia Hui and the CCP evolved out of a different context. The Red Army required Hui support in Ningxia during the civil war with the Nationalists. Thus, they established the Yuhai County Hui Autonomous Government in 1936, the first autonomous county in China. A commemorative sign still hangs over Tongxin Grand Mosque. Personal observation, Tongxin County, October 31, 2010.

²² In 2010, mediators in the NHAR handled 57,410 cases, with a drop in 2011: 29,300 cases as well as an additional 5,268 "difficult cases" (*yinan fuza maodun*) (Wang 2012, 51).

²³ My visit to the judicial bureau occurred in November 2010; thus the total number of cases mediated by Old Dong in 2010 would be slightly higher.

²⁴ Old Dong's assertion is not completely accurate. Several cases I reviewed entailed judicial mediation, but on the whole, most case records extolled Old Dong's role.

²⁵ See Minzner (2011) for a similar example of a “model judge” from Jiangsu who was likewise extolled for handling 3,100 cases in fourteen years without a single complaint or appeal.

²⁶ The 2010 Mediation Law did not clarify the issue. Article 18 states, “The basic level people’s courts [and] public security organs, in order to find a suitable way to resolve a dispute through mediation, may, before accepting a case, inform the parties to apply for mediation by a PMC.”

²⁷ In a case filed June 18, 2013 in the U.S. District Court Eastern District of New York, *Raza vs. New York*, involving the New York Police Department’s use of Muslim informants to gather information on Muslim communities in Brooklyn, the permissibility of informants’ use of entrapment is one issue among others raised by the plaintiffs.