

Shari‘a as Taboo of Modern Law: Halal Food, Islamophobia, and China

[T]he state’s neutrality does not preclude the permissibility of religious utterances within the political public sphere . . . The “separation of church and state” calls for a filter between these two spheres—a filter through which only “translated,” i.e., secular contributions may pass from the confused din of voices in the public sphere into the formal agendas of state institutions.
—Jürgen Habermas¹

Introduction

On July 1, 2016, a Chinese Muslim (Hui) man named Mr. Xian Guolin,² from Gansu province, opened a halal beef noodle shop near People’s Square, the center of Shanghai. On July 12, Mr. Xian reported on Weixin (a popular peer-to-peer micro-blogging site in the People’s Republic of China, or PRC), that a group of approximately 100 Hui, claiming to represent halal restaurants in Shanghai, gathered in front of the restaurant to protest its opening. The Hui argued that the restaurant violated the “Shaanxi-Gansu-Ningxia Agreement,” an oral understanding among the Hui business community that no one will open a halal restaurant within 400 meters of an existing one (hereinafter the “400-meter rule”). There were, in fact, at least two other halal restaurants in the neighborhood surrounding Xian’s restaurant. Over the next week, scores of Hui gathered in front of Xian’s restaurant accosting customers, destroying the restaurant’s tables, and threatening Xian’s relatives.

Xian documented all of this on Weixin, where netizens called his attackers the “noodle mafia.” In response, non-Muslim Han Chinese residents of Shanghai patronized Xian’s restaurant in solidarity against the enforcement of the 400-meter rule, saying that it was an extralegal rule and only state law, not “ethnic rules” should apply to such

¹ Jürgen Habermas, *Notes on Post-Secular Society*, 25 NEW PERSPECTIVES Q. 17, 28 (2008).

² In this article, I place Chinese surnames first per Chinese name order.

disputes. On July 19, the police intervened by mediating the dispute, and Xian agreed to alter his restaurant's Chinese sign, by taking down the halal (*qingzhen*) symbol and characters for "beef meat" (*niurou*). While the dispute fizzled, online commentators were incensed at the outcome, claiming, "what was wiped out was not 'beef meat' but the legal system!" and "religion has replaced the law," asserting that religious mob justice had superseded formal law.³

The Shanghai beef noodle case was one spark in what Chinese refer to as the "spread of halal" (*qingzhen fanhua*) debate, a rare nationwide deliberation about the status of Islam in China, which featured, for the first time in the public sphere, a discussion of "shari'a," a complex concept that I translate as "Islamic law and ethics." The spread of halal is a phenomenon of social perception just as much as social fact that has overtones similar to what in the United States and United Kingdom is called "shari'a creep," the idea that shari'a intrudes on state law.⁴ On Mr. Xian's Weibo page (another microblogging site), the discussion attracted some 400 million comments, with some netizens concerned that the 400-meter rule represents a "parallel system" to that of the state.⁵ This language is similar to that which has been used in Western liberal states, for example when Chancellor Angela Merkel warned of the emergence of "parallel societies"

³ *Shanghai Alilan, yijia shile 'niurou' de shangdian* (上海阿里兰，一家失了“牛肉”的商店) [Shanghai's Alilan: One Family Lost the "Beef Meat" Shop], TIANYA (天涯) [Far Corners of the Earth] (2016), <http://bbs.tianya.cn/post-free-5534156-1.shtml>.

⁴ ABDULLAHI AHMED AN-NA'IM, ISLAM AND THE SECULAR STATE 220 (2009), Cyra Akila Choudhury, *Shari'ah Law as National Security Threat?* 46 AKRON L. REV. 49 (2013), ZAREENA GREWAL, ISLAM IN A FOREIGN COUNTRY: AMERICAN MUSLIMS AND THE GLOBAL CRISIS OF AUTHORITY 300 (2013), RALPH GRILLO, MUSLIM FAMILIES, POLITICS AND THE LAW: A LEGAL INDUSTRY IN MULTICULTURAL BRITAIN 174 (2016), Carlo A. Pedrioli, *Constructing the Other: U.S. Muslims, Anti-Sharia Law, and the Constitutional Consequences of Volatile Intercultural Rhetoric* 22 S. CAL. INTERDISC. L. J. 65 (2012).

⁵ Xian Guolin (咸国林), *Alilan niuroumian* (阿里兰牛肉面) [Alilan Beef Noodles], Weibo (微博) [Micro-Blog] (2016), http://www.weibo.com/u/5979672876?refer_flag=1001030101_&is_hot=1.

following Germany's liberal refugee policy—a sign of what some have called the end of multiculturalism.⁶

Specifically, the spread of halal refers to the proliferation of halal food signs throughout Chinese society, a popularization that occurs against the backdrop of Islamic revival and the relative economic progress of Hui. From the Hui perspective, the spread of halal is most immediately about truth-in-labeling and quality control, but it is equally about autonomy and piety, about assuring what they perceive to be halal meets the requirements of shari'a. Not only are some Han Chinese selling so-called halal, but the industry operates in the absence of robust state enforcement. Thus, the halal symbol is posed between, on the one hand, the increasing visibility of Islam in public life in China, and specifically, the commercialization of Islam, and, on the other hand, government regulation (or the lack thereof). This became clear to me when I visited Shanghai two days after the police mediation, during which I spoke to the owner of a halal restaurant in the same neighborhood as that of Mr. Xian. The Hui shopkeeper articulated the problem of shari'a under socialist law: "If we cannot know it's really halal, then this violates Islam . . . the government does not regulate this."⁷

From the perspective of some Han (the overwhelming ethnic majority in China), the spread of halal speaks to concerns about the "Islamicization" of Chinese society and

⁶ Rick Noack, *Multiculturalism Is a Sham, Says Angela Merkel*, WASH. POST (Dec. 14, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/12/14/angela-merkel-multiculturalism-is-a-sham/?utm_term=.2ce74ddc556b. On the end of multiculturalism, see Pascal Bruckner, *Enlightenment Fundamentalism or Racism of the Anti-Racists?*, SIGNANDSIGHT.COM (Jan. 24, 2007), <http://www.signandsight.com/features/1146.html>; NILÜFER GÖLE, *THE DAILY LIVES OF MUSLIMS: ISLAM AND PUBLIC CONFRONTATION IN CONTEMPORARY EUROPE* (2017).

⁷ In terms of data collected for purposes of this article, I have conducted fieldwork in China from 2004 to 2016, including fieldwork in Beijing (2004–2005), northwest China (2009–2011, summer 2015, summer 2016), and Shanghai (summer 2016). During fieldwork, I conducted over 100 interviews in Mandarin and the northwest Hui dialect with Hui entrepreneurs and restaurateurs, owners and employees of halal food factories and processing plants, traders, officials, and clerics on the question of halal food. Given the sensitivity of the topic, I anonymize my interviews herein.

government in the face of global currents of Islamophobia and anxieties about Islamic neofundamentalism.⁸ The Shanghai case, among other incidents, has been taken up by establishment “intellectuals” in Beijing, who inform governmental policy toward ethnic and religious minorities, and who claim the case demonstrates that lenient policies toward Muslim minorities militate against national belonging and the obligations of citizenship within a socialist state.

This article unpacks the spread of halal debate with reference to the issue of the proliferation of religious symbols in the public sphere, a proliferation that appears to challenge secularism as an ideological cornerstone of the modern state. At the core of the debate is the Chinese word *qingzhen*, which most Hui translate as “halal” and understand chiefly as a taboo against pork. *Qingzhen*, in fact, has a number of meanings, and, for Hui, it stands for Islam itself as their “sacred symbol.”⁹ In recent years, religious symbols have been foci of controversy in a number of jurisdictions.¹⁰ In the aftermath of 9/11,

⁸ To distinguish Hui from Uyghurs, there are over 10 million Hui in China who speak versions of Mandarin and look phenotypically like Han Chinese. Uyghurs, of whom there are slightly fewer, reside primarily in Xinjiang, speak their own Turkic language, and look closer to Central Asians than Han. Since a major riot in Urumqi, the capital of Xinjiang, on July 5, 2009, relations between Uyghurs and the state have worsened. In October 2013 and in March 2014, there were terrorist attacks in Beijing and Kunming, respectively, allegedly committed by Uyghur “separatists.” Whereas Uyghurs have become a suspect class in China, following the spread of halal scare, Hui now also fall under suspicion. MATTHEW S. ERIE, CHINA AND ISLAM: THE PROPHET, THE PARTY, AND LAW 8–9 (2016).

⁹ DRU C. GLADNEY, MUSLIM CHINESE: ETHNIC NATIONALISM IN THE PEOPLE’S REPUBLIC OF CHINA 7 (2d ed. 1996).

¹⁰ Bill 60, “Charte affirmant les valeurs de laïcité et de neutralité religieuse de l’État ainsi que d’égalité entre les femmes et les hommes et encadrant les demandes d’accommodement” [Charter Affirming the Values of State Secularism and Religious Neutrality and of Equality Between Women and Men, and Providing a Framework for Accommodation Requests], introduced during the Fortieth Legislature, First Session of the National Assembly of Quebec, on November 7, 2013 (prohibiting public sector employees from wearing “*signes ostentatoires*” (conspicuous religious symbols)); *Lautsi v. Italy*, App. No. 30814/06 Eur. Ct. H. R., HUDOC (Mar. 18, 2011), <http://hudoc.echr.coe.int/eng?i=001-104040> (finding that a crucifix displayed in a public schoolroom did not violate the right to religious freedom under article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms); *Eweida v. United Kingdom*, App. Nos. 48420/10, 59842/10, 51671/10, 36516/10 Eur. Ct. H. R., HUDOC (Jan. 15, 2013), <http://hudoc.echr.coe.int/eng?i=001-115881> (holding that a British Airways attendant could wear a Christian cross outside of her uniform). For commentaries on these controversies among others, see Lori G. Beaman, *Battles Over Symbols: The “Religion” of the Minority Versus the “Culture” of the Majority*, 28

symbols of Islam have, of course, been a particular source of alarm.¹¹ Most scholarship on these issues focuses on the “problem” of religious symbols in Western liberal states where legal institutions and civil society ostensibly protect the right of religious minorities to practice their faiths.

In this article, I argue that the symbols of the spread of halal debate help explain the dynamics of interpreting Islam and shari‘a, in particular, in multicultural secular states, and I do so with reference to the anthropology of taboo.¹² Populism, anti-immigrant sentiment, and xenophobia, particularly against Muslims, are ascendant in North America, the United Kingdom, Europe, India, and China, and these voices find expression in not just the public sphere but also in law. So whereas, on the one hand, political decision making and lawmaking, from executive orders¹³ to international law,¹⁴ may demonstrate openness to nativist sentiment, some of which is motivated by Islamophobia, on the other hand, shari‘a cannot be incorporated or “translated,” to use Habermas’s term, into state law. I explain this selective filter ethnographically by taking

J.L. & RELIGION 67 (2013); Ian Leigh & Andrew Hambler, *Religious Symbols, Conscience, and the Rights of Others*, 3 OXFORD J.L. & RELIGION 2 (2014).

¹¹ One example is the Park51 Project in New York City, the so-called “ground zero mosque,” where I took students while teaching a law course on Muslim minorities in 2014, and whose construction opponents viewed as a sign that terrorists had claimed victory after the 9/11 attacks. On the place of Islamic symbols in public life after 9/11, see NILÜFER GÖLE, *ISLAM AND PUBLIC CONTROVERSY IN EUROPE* (2013); KATHLEEN M. MOORE, *VISIBLE THROUGH THE VEIL: THE REGULATION OF ISLAM IN AMERICAN LAW* (2007); JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* (2007).

¹² The study of taboo has been a core interest in the discipline of anthropology. See ÉMILE DURKHEIM, *THE ELEMENTARY FORMS OF RELIGIOUS LIFE* (1912); JAMES GEORGE FRAZER, *THE GOLDEN BOUGH* (1951); MARY DOUGLAS, *PURITY AND DANGER* (1966); CLAUDE LÉVI-STRAUSS, *THE ELEMENTARY FORMS OF KINSHIP* (James Harle Bells, trans., Beacon Press, 1969); A.R. RADCLIFFE-BROWN, *TABOO: THE FRAZER LECTURE 1939* (2014); FRANZ BAERMANN STEINER, *SELECTED WRITINGS: 1. TABOO, TRUTH, AND RELIGION* (1999).

¹³ Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017.)

¹⁴ *S.A.S. v. France*, App. No. 43835/11 Eur. Ct. H.R., HUDOC (July 1, 2014), <http://hudoc.echr.coe.int/eng?i=001-145466> (finding that the French ban on wearing clothing designed to conceal one’s face in public did not violate the Convention for the Protection of Human Rights and Fundamental Freedoms).

the Hui idea of shari‘a as a taboo to reflexively think about how secular non-Muslim states regard shari‘a as the taboo of modern law.

I do so through the case of China, a country with a majoritarian tradition of governance, yet one that has, since the economic liberalization of the 1980s, sought to represent itself as a “multiethnic nation-state” that includes “freedom of religion,” and hence, one which I understand as a certain kind of modern secular state. Secularism is a term with a number of divergent understandings. Law-making on religious issues often invokes the doctrine of secularism, which is conventionally understood as the separation of religion and state authority, and avows neutrality toward religion and religious minorities.¹⁵ This version of secularism hews closely to Habermas’ sense of the term. Among other scholars, however, the concept is unsettled and the object of on-going critique.¹⁶ Talal Asad, for one, has shifted understandings of secularism to the active fashioning of religion.¹⁷ This interventionist secularism, in turn, manifests differently according to the political system, multicultures, and other contingent factors that shape the modern secular state.¹⁸ The understanding of secularism and how it interacts with anti-religious sentiment has particular traction for contemporary China. China features a strong form of secularism whereby the state has a monopoly on religious institutions and

¹⁵ ANDREW KOPPELMAN, *DEFENDING AMERICAN RELIGIOUS NEUTRALITY* (2013); KENT GREENAWALT, *RELIGION AND THE CONSTITUTION: VOLUME 2: ESTABLISHMENT AND FAIRNESS* (2008), BRIAN LEITER, *WHY TOLERATE RELIGION?* (2012); JOCELYN MACLURE AND CHARLES TAYLOR, *SECULARISM AND FREEDOM OF CONSCIENCE* (2011).

¹⁶ SINDRE BANGSTAD, *SEKULARISMENS ANSIKTER (FACES OF SECULARISM)* (2009); *RETHINKING SECULARISM* (Craig Calhoun et al. eds., 2011).

¹⁷ TALAL ASAD, *FORMATIONS OF THE SECULAR* (2003). *See also* HUSSEIN ALI AGRAMA, *QUESTIONING SECULARISM* (2012); SABA MAHMOOD, *POLITICS OF PIETY* (2005).

¹⁸ *VARIETIES OF SECULARISM IN ASIA* (Nils Bubandt & Martijn van Beek eds., 2012); Ahmet T. Kuru, *Assertive and Passive Secularism: State Neutrality, Religious Demography, and the Muslim Minority in the United States*, in *THE FUTURE OF RELIGIOUS FREEDOM* 235 (Allen Hertzke ed., 2012).

thwarts the emergence of a religious civil society, particularly in the case of Islam.¹⁹

Under this and other forms of secularism, shari‘a is taboo. The broader point, beyond the jurisdiction of the PRC, is that as religious symbols become more prominent in multicultural societies, often through increased market access, state law and regulation may respond more to anti-minority rhetoric than to the call to law by religious minorities for greater protection of their rights.

The remainder of this article is divided into the following parts: Part I introduces the problem of religious symbols, and how secular states regulate religion and religious law primarily through policing their symbols. Part II focuses on the religious symbol of halal, specifically, *qingzhen* in China, with reference to the anthropology of taboo. Part III shows how halal occupies a regulatory space in between shari‘a and state law. Part IV considers how regulatory problems impact China’s presence in the global halal market. Part V examines how the semiotic excess of halal and regulatory inadequacies have given rise to the controversy of the spread of halal, a problem with both domestic governance but also international trade repercussions. Part VI demonstrates how Hui have responded to the problem by mobilizing formal law, and analyzes the process and problems of turning a taboo, as recognized by a religious minority, into a law backed by the authority of the state. The conclusion reflects on the implications of shari‘a as taboo of state law for policy recommendations for the case of halal food regulation in China.

I. The Symbolization of Shari‘a under State Law

¹⁹ Matthew S. Erie, *Muslim Mandarins in Chinese Courts: Dispute Resolution, Islamic Law, and the Secular State in Northwest China*, 40 LAW & SOC. INQUIRY 1001 (2015).

The presence of religious symbols²⁰ in public places has become a litmus test for government regulation and secularism, more broadly. Understanding religious symbols requires laying some groundwork in terms of their definition and their regulation by the state. As a basic observation, religious symbols make concrete and overt that which can otherwise be transcendent, esoteric, or numinous. The anthropologist Clifford Geertz went to so far as to call religion a “system of symbols.”²¹ Such symbols take a variety of forms, including graphic, discursive, sartorial, military, and dietary, to name a few. These symbols are commonly thought of as displayed (e.g., in a classroom or public square), but they are also mobile (e.g., they can be worn on one’s person), communicable (e.g., broadcast over airwaves or television, e-mailed, or tweeted) or transformed (e.g., bodily consumed). In liberal states, state law has been traditionally averse to regulating religion, preferring to relegate it to the private sphere. Yet the mobility of religious symbols, including across borders, frustrates the separation of private from public spheres, religious institutions from civilian spaces, and domestic from international governance.²²

Upon the appearance of religious symbols in public spaces, individuals can interpret such symbols in a number of ways, often influenced by their position vis-à-vis the religion. In the context of religious minority communities, symbols assume particular meanings to the in-group, as markers of piety and observance or conquest and conversion. Out-group members, including state actors, interpret them through their own

²⁰ By symbols, I refer to the sign, as understood by Saussurean semiotics, in which the physical mark (“signifier”) does not resemble the idea referred to (“signified”) but which is based on convention (i.e., cultural understandings). DANIEL CHANDLER, SEMIOTICS: THE BASICS 36 (2007).

²¹ Clifford Geertz, *Religion as a Cultural System*, in THE INTERPRETATION OF CULTURES 87, 90 (1973).

²² LAURA BARNETT, FREEDOM OF RELIGION AND RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE (2004), <http://www.publications.gc.ca/collections/Collection-R/LoPBdP/PRB-e/PRB0441-e.pdf>; JUDITH BUTLER ET AL., THE POWER OF RELIGION IN THE PUBLIC SPHERE (Eduardo Mendieta & Jonathan VanAntwerpen eds., 2011); Suzanna Sherry, *Religion and the Public Square: Making Democracy Safe for Religious Minorities*, 47 DEPAUL L. REV. 499 (1997); Ruti Teitel, *Critique of Religion as Politics in the Public Sphere*, 78 CORNELL L. REV. 747 (1993).

filters of meaning, historical and personal encounters, and discursive borrowings. Thus, whereas from the in-group perspective, practices surrounding religious symbols demonstrate the right to manifest religion, from the out-group view, the encroachment of signs of a religion into public places may conflict with the principle of neutrality as encoded in domestic and international law, and may even evoke the threat of theocracy.

Islamic symbols have attained an acute resonance in the ordering of the post-9/11 global system and the expansion of state authority both in terms of its domestic population but also across borders. The hijab in French public schools, for instance, illustrates the fluidity of religious symbols, permitting contesting understandings.²³ Turkish scholar Nilüfer Göle has argued that the visibility of Islamic symbols, including mosques, burqas, and ritual slaughter, unsettle conventional normative discourses pertaining to religious freedom, minority rights or multiculturalism, and, in turn, redefine norms.²⁴ Signs of Islam are inextricably bound up with shari‘a, and it is with shari‘a that Islam attains its regnant symbolic meaning in secular life. Among Muslims, shari‘a is a profoundly disputed realm of textual authorities, canonical exegesis, and rule application. At the levels of interpretation and implementation, then, Muslims disagree about how to live a life in accordance with shari‘a. Yet, despite internal dissension, the common denominator is that shari‘a provides a blueprint for an ethical life, often by following the example (*sunna*) of the Prophet Muhammad as recited in the Qur’an and exemplified in the hadiths (his sayings and deeds). Hence, shari‘a provides guidance on both

²³ Mayanthi L. Fernando, *Reconfiguring Freedom: Muslim Piety and the Limits of Secular Law and Public Discourse in France*, 37 AMER. ETHNOLOGIST 19 (2010); Ellen Wiles, *Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality*, 41 LAW & SOC’Y REV. 699 (2007); Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743 (2005).

²⁴ GÖLE, *supra* note 11.

interpersonal relations and one's relationship with God, and Islamic symbols orient Muslims toward proper conduct.

With this understanding of religious symbols, the entry point for analysis is how governments regulate such symbols. As a general matter, among the majority of modern Anglo-European liberal states, the standard approach to regulating religion and its symbols has been avoidance. Avoiding interpreting religion follows from the doctrine of secularism, in its traditional or Habermasian sense.²⁵ Where the secular state intervenes in religious disputes, it may do so on the grounds that it analyzes relevant legal questions in light of state law and not religious law. When that is not possible, the state may decline jurisdiction over the matter and require religious authorities to resolve the conflict.

Under this understanding of the doctrine of secularism, multicultural states have conventionally sought to permit groups' religious freedom, including its displays, within limits. Under U.S. law, such tolerance has been counterbalanced by concerns that the government may favor one religion over another.²⁶ In U.S. courts, the analysis often hinges on the location of the display (i.e., private or public property) and the nature of the promoter of the religious symbol, whereby private religious expression is protected but the state's endorsement of religion in public places is not.²⁷ The neutral position of the state toward religious symbols on public property has been obfuscated by public safety and national security concerns in a number of jurisdictions.²⁸

²⁵ *Jones v. Wolf*, 443 U.S. 595 (1979) (applying the neutral-principles method to an intrachurch dispute). *But see Mohammed Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945 (finding that a divorced Muslim woman's right to maintenance, under shari'a, from her former husband ceases with expiration of stipulated payment period).

²⁶ *Town of Greece, N.Y. v. Galloway*, 134 S.Ct. 1811 (2014) (holding that prayer opening a town board meeting did not have to be nonsectarian to comply with the Establishment Clause.)

²⁷ *Boyajian v. Gatzunis*, 121 S. Ct. 759 (finding that a state zoning law did not confer a preferred status on a religious group).

²⁸ *See e.g., S.A.S. v. France supra* 14.

It is in the regulation of Islamic symbols, and, in particular, those of shari‘a where state neutrality has been most tested. As a baseline, U.K. law, for instance, does not provide any status to shari‘a.²⁹ Under U.S. law, judges may, in certain circumstances, regard shari‘a as a kind of foreign law.³⁰ Many European civil law states apply international private law that may permit shari‘a rules for a particular matter when doing so would not contravene state law or public policy.³¹ In many jurisdictions across the United Kingdom, North America, and Europe, religious arbitration has grown partly as a response to state law’s avoidance of religion.³²

Recent years, however, have shown a change in how some liberal states approach signs of shari‘a from one of avoidance to active restriction. The backdrop of this change is terrorist attacks in the United States, United Kingdom, France, Germany, and elsewhere, carried out by Islamist groups, as well as the Syrian crisis and mass movement of immigrants into Europe. The increasing profile of Islam in political life has led to a rise in nativism that has, in turn, affected popular sentiment in liberal democracies. Such movements have their own histories and social pathologies, yet they each share an anti-

²⁹ Samia Bano, *In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the ‘Sharia Debate’ in Britain*, 10 ECCLESIASTICAL L.J. 283 (2008); John R. Bowen, *How Could English Courts Recognize Shariah*, 7 ST. THOMAS L. REV. 411 (2011).

³⁰ Adam Shinar & Anna Su, *Religious Law as Foreign Law in Constitutional Interpretation*, 11 INT’L J. CONST. L. 74 (2013); Eugene Volokh, *Religious Law (Especially Islamic Law) in American Courts*, 66 OKLA. L. REV. 431 (2014).

³¹ Peter Crumper, *Multiculturalism, Human Rights and the Accommodation of Sharia Law*, 14 HUM. RTS. L. REV. 31 (2014); Dominic McGoldrick, *Accommodating Muslims in Europe: From Adopting Sharia Law to Religiously Based Opt Outs from Generally Applicable Laws*, 9 HUM. RTS. L. REV. 603 (2009); Mathias Rohe, *Shari‘a in a European Context*, in LEGAL PRACTICE AND CULTURAL DIVERSITY 93 (Ralph Grillo et al. eds., 2009).

³² Marion Boyd, *Ontario’s ‘Shari‘a Court’: Law and Politics Intertwined*, in ISLAM AND ENGLISH LAW: RIGHTS, RESPONSIBILITIES AND THE PLACE OF SHARI‘A 176 (Robin Griffith-Jones ed., 2013); Michael A. Helfand, *Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders*, 86 N.Y.U. L. REV. 1231 (2011); Carolyn Litt Wolfe, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts*, 75 FORDHAM L. REV. 427 (2007).

Muslim message and one that particularly criticizes shari‘a.³³ Nativist campaigns have sought to mobilize state law to outright abolish shari‘a.³⁴

As to the “filter” between secular and religious life, neither Habermas, who was most concerned about religious “utterances” penetrating the public sphere, nor Asad, who considered criticism against Islam as an expression of liberal “freedom,”³⁵ raised the alarm against antireligious extremism.³⁶ The current momentum of Islamophobic nationalism, however, has propelled reactionary candidates into heads of states and resulted in increased hate crimes against Muslims.³⁷ Nativists “translate” hate speech into policy, most infamously in the example of U.S. President Trump’s executive orders in 2017, which legal scholars view as unlawfully targeting individuals on the basis of religion.³⁸ Global anti-Muslim sentiment has emboldened more invidious strains of secularism, moving the treatment of certain religious symbols in the public sphere well beyond neutrality or even appropriation to demonization.

II. From Symbol to Taboo: Understanding *Qingzhen*

³³ On Islamophobia in Europe and North America, see WAJAHAT ALI, *FEAR, INC.: THE ROOTS OF THE ISLAMOPHOBIA NETWORK IN AMERICA* (2011); SINDRE BANGSTAD, *ANDERS BREIVIK AND THE RISE OF ISLAMOPHOBIA* (2014); Khaled A. Beydoun, *America, Islam, and Constitutionalism: Muslim American Poverty and the Mounting Police State*, 31 J.L. & RELIGION 279 (2016).

³⁴ Between 2010 and 2018, 201 anti-shari‘a bills have been introduced in 43 states. Southern Poverty Law Center, *Anti-Sharia Law Bills in the United States*, HATEWATCH (Feb. 5, 2018), <https://www.splcenter.org/hatewatch/2018/02/05/anti-sharia-law-bills-united-states>.

³⁵ Talal Asad, *Free Speech, Blasphemy, and Secular Criticism*, in *IS CRITIQUE SECULAR?* 20 (2009).

³⁶ Habermas, *supra* note 1.

³⁷ Carol Kuruvilla, *Anti-Muslim Hate Crimes Are Spiking in the U.S. Donald Trump Won’t Speak Up*, HUFF. POST (Feb. 27, 2017), http://www.huffingtonpost.com/entry/trump-islamophobia-anti-semitism_us_58b08debe4b0780bac2938b4.

³⁸ See *supra* note 13; Milenko Martinovich, *Stanford Scholars Analyze Trump’s Executive Order on Immigration*, STANFORD NEWS (Mar. 7, 2017), <http://news.stanford.edu/2017/03/07/stanford-scholars-analyze-trumps-travel-ban/> (discussing the executive orders’ legality). See also Joseph Margulies, *Law, Politics, and Symbolism in the Muslim Ban*, VERDICT (Feb. 6, 2017), <https://verdict.justia.com/2017/02/06/law-politics-symbolism-muslim-ban> (understanding the significance of the executive orders as symbolic).

In China, paradoxically, whereas the public sphere is tightly orchestrated through official news and propaganda, some nonstate symbols have become ubiquitous in the multimediatized society. Islam has a long history in China, yet concurrent with the rise of Islam in the public sphere in North America and Europe, Islam in China has gained an unusual visibility primarily through its metasymbol *qingzhen* (清真), composed of two characters meaning, respectively, “pure” and “true.” Among Hui populations, the symbol *qingzhen* means halal. Halal, which means “permitted,” “lawful,” or “legal,” is used to define standards and protocol for the production, preparation, and consumption of food. Halal is thus a graphic mark—a sign—that stands in for an array of sanctioned behavior, including human-animal relationships, ritual slaughter, hygiene, blessings and authoritative speech, modes of eating, and even marketing, business management, and gendered roles in the foregoing. For many Muslim minorities, including Chinese Muslims, halal is the kernel of shari‘a.

To be more precise, in Hui discourse, *qingzhen* is a polyseme with three homologous meanings.³⁹ First and most narrowly, *qingzhen* means halal as applied to food.⁴⁰ For Hui, permissibility in diet is a consequence of the pork taboo: porcine

³⁹ *Qingzhen* has been a mainstay in the study of Islam in China. MARIS BOYD GILLETTE, *BETWEEN MECCA AND BEIJING: MODERNIZATION AND CONSUMPTION AMONG URBAN CHINESE MUSLIMS* (2000); Dru C. Gladney, *Qingzhen: A Study of Ethnoreligious Identity Among Hui Muslim Communities in China* (1987) (unpublished Ph.D. dissertation, University of Washington) (on file with author); Barbara L.K. Pillsbury, *No Pigs for the Ancestors: Pigs, Mothers and Filial Piety Among the Taiwanese Muslims*, SYMPOSIUM ON CHINESE FOLK RELIGIONS, UNIVERSITY OF CALIFORNIA, RIVERSIDE (Apr. 24, 1974) (on file with the author).

⁴⁰ Opinions vary as to the etymology of the term *qingzhen*. Whereas there is a general consensus that the term first appeared in Chinese lexicon in the Tang Dynasty, there is disagreement as to whether or not it held “Islamic” meanings at that time. See Ding Mingjun (丁明俊), *Lishishang Huizu Musilin dui “Qingzhen Wenhua” de goujian* (历史上回族穆斯林对“清真文化”的构建) [Hui Muslims Historical Construction of “Qingzhen Culture”] (2016) (unpublished paper) (on file with author) (tracing the term back to the earliest Muslims in the Tang Dynasty). But see Rev. Claude L. Pickens, *Clean and True*, 24 FRIENDS OF MUSLIMS 6 (1950) (writing that *qingzhen* first appeared in the poetry of Li Bai (699–762) although the concept had no Islamic meaning during this time). Most likely the term underwent a number of semantic redefinitions, as it was used and claimed by different religious groups in China, including Jews.

products cannot have been used to make food for Hui. Second, *qingzhen* is synonymous with “lawful” more generally, as applied to speech, dress, and interpersonal conduct.⁴¹ Hui speak of a *qingzhen* act or a *qingzhen* statement. Third, *qingzhen*, as stated above, is a synecdoche for Islam itself (e.g., a mosque is a *qingzhensi*, literally “temple of purity and truth,” and the *shahada* or declaration of the faith is *qingzhenyan*, literally “pure and true speech”).

These three overlapping meanings show the multiple dimensions of *qingzhen* as the core taboo of Hui. The anthropologist Dru Gladney has written, borrowing from Mary Douglas, that *qingzhen* separates the “self” (Hui) from the “other” (Han) in demarcating what is pure from what is dangerous.⁴² For Douglas, who championed structuralist approaches to anthropology, at the center of taboo was ambiguity, summarized in her observation “Reflection on dirt involves reflection on the relation of order to disorder, being to non-being, form to formlessness, life to death.”⁴³ Taboos mark the fault lines of symbolic systems whereby matter, identities, and ontologies are made sense of, with orders composed around or against anomalies (i.e., taboos). Proponents of psychoanalytic anthropology similarly saw ambivalence in taboo—this time, emotional—as inspired by Freudian thought. Freud applied his psychical apparatus to society arguing that taboo means both “sacred” and “forbidden.”⁴⁴ Valerio Valeri harmonized the structural (taboo as categorization) and psychoanalytic (taboo as repression) traditions to posit that taboo is

⁴¹ Some Hui and many Uyghurs use the Arabic term *toyyiban* that, like *qingzhen*, connotes a pure and wholesome life in the areas of not only diet, but also thoughts and deed. See Saroja Dorairajoo & Ma Jianfu, *Does Islam Have the Answer to China's Food Safety Problems?* SOUTH CHINA MORNING POST (July 29, 2016), <http://www.scmp.com/comment/insight-opinion/article/1996452/does-islam-have-answers-chinas-food-safety-problems>.

⁴² GLADNEY, *supra* note 9, at 13–14.

⁴³ DOUGLAS, *supra* note 12, at 5.

⁴⁴ SIGMUND FREUD, *TOTEM AND TABOO* 24 (W.W. Norton & Co., 1950) (1913).

centrally about pollution, and the integrity of the subject.⁴⁵ In his study, Valeri identifies linkages between these traditions and poststructural thought, finding that taboo pollutes the symbolically founded subject, and that unlawful food can disintegrate the symbolic order through which the subject is constituted.⁴⁶

In the course of conducting fieldwork in northwest China from 2009 to 2016, I was constantly reminded of the centrality of the *qingzhen* symbol to providing a symbolic language by which Hui marked their social and religious lives. *Qingzhen* was everywhere. It was on not just beef noodle shops, but also on fast food restaurants, clothes, milk bags, soap and toothpaste, barbershop fronts, yak bone marrow stalls, public shower rooms, and airplane food boxes. Whereas Gladney conducted his fieldwork in the 1980s when Hui and Han were just beginning to experience the benefits of China's "opening and reform" by an increase in standard of living and greater access to consumables, three decades on, it is difficult to go anywhere in China without seeing the *qingzhen* symbol. It is this production of material culture and its presence in traditionally Han areas that has laid the groundwork for the spread of halal.

Against the backdrop of increasing wealth throughout Chinese society, the proliferation of the *qingzhen* symbols has led to an increasing intermingling of Islamic and non-Islamic Chinese symbols, straining the state's capacity to dominate religious symbols, and causing friction felt by Muslims and Han Chinese. For instance, Hui spoke of "*qingzhen wuran*" (pollution of *qingzhen*) when governmental buildings encroached upon the land of mosques and tombs, land which they deem to be holy. Such "pollution" gives credence to Valeri's analysis whereby Hui integrity (individual, bodily, communal,

⁴⁵ VALERIO VALERI, *THE FOREST OF TABOOS* (2000).

⁴⁶ *Id.* at 105, 107.

or spiritual) is threatened by those polluting elements of “state secularism.”⁴⁷ In the next part, I assess how the government has regulated halal as part of its overall approach to governing religion.

III. Between Shari‘a and State Law

As to the question of how secular states govern religious law, PRC law and policy begins at a different starting point than liberal democracies, even if its relevant law reproduces language found elsewhere. China has enshrined a boilerplate notion of “separation of church and state” in article 36 of its Constitution. As in other jurisdictions, the doctrine has two sides: it protects religious believers from state intrusion, what is commonly referred to as “freedom of religious belief,” and also protects the state from unlawful interference by religion. The difference between China’s version of the separation of church and state doctrine and its appearance in the constitutions of Western liberal democracies is that, as a “socialist legal system with Chinese characteristics,”⁴⁸ Chinese law and policy is led by the CCP. The CCP then has a heavy hand in intervening—sometimes violently—in influencing all aspects of religious life, from places of prayer and textbooks used in religious schools to vetting clerics and authorizing official “scripts” for sermons.⁴⁹ A bureaucracy led by the State Council’s Religious Affairs Bureau and the CCP’s United Front Work Department (UFWD) has issued a

⁴⁷ R. Michael Feener, *Official Religions, State Secularisms, and the Structures of Religious Pluralism*, in PROSELYTIZING AND THE LIMITS OF RELIGIOUS PLURALISM IN CONTEMPORARY ASIA 1 (Juliana Finucane & R. Michael Feener eds., 2014).

⁴⁸ ALBERT H.Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA 45 (4th ed. 2011).

⁴⁹ Vincent GOOSSAERT & DAVID A. PALMER, THE RELIGIOUS QUESTION IN MODERN CHINA (2011); Richard Madsen, *Secular State and Religious Society in Mainland China and Taiwan*, in SOCIAL SCIENTIFIC STUDIES OF RELIGION IN CHINA 273 (Fenggang Yang & Graeme Lang eds., 2011); Pitman B. Potter, *Belief in Control: Regulation of Religion in China*, 174 CHINA Q. 317 (2003); YANG FENGANG, RELIGION IN CHINA: SURVIVAL & REVIVAL UNDER COMMUNIST RULE (2011).

number of administrative regulations and rules that shape belief and practice on the ground.⁵⁰

Like U.K. law, PRC law does not provide any legal basis for shari‘a. Although PRC law does formally recognize the “customs” (*xiguan*) of ethnic minorities,⁵¹ to date, very little of what Muslims outside of China call shari‘a has been enforced by PRC courts or been codified at the local or higher administrative levels as customs.⁵² In response, shari‘a institutions and practices among Hui are largely informalized.⁵³ Shari‘a overlaps with the category of *minjian* (“unofficial” or “popular”), as demonstrated in the case of the noodle mafia. The 400-meter rule is a mechanism of private enforcement. While the 400-meter rule itself does not have any shari‘a content, some Hui I spoke to consider it a means for regulating halal quality in an ultracompetitive market, and thus, it exemplifies the kind of nonstate internal rules that characterize Hui normative life, especially in the economic realm.⁵⁴ These rules overlap with those derived from shari‘a, namely, from the Qur’an and Sunnah as well as Hanafi compendia. Through sermons, madrasa curricula,

⁵⁰ *Zongjiao shiwu tiaoli xiuding cao'an (xiudinggao)* (宗教事务条例修订草案 (修订稿)) [(Amended Version) of the Revised Draft of the Religious Affairs Regulations], promulgated by the State Council on September 7, 2016, effective February 1, 2018 [hereinafter Revised Draft of the Religious Affairs Regulations].

⁵¹ Gao Qicai (高其才), *Dangdai Zhongguo guojia lifa yu xiguanfa* (当代中国国家立法与习惯法) [Modern Chinese State Legislation and Customary Law] (on file with the author) (paper presented at the Third East Asia Law and Society Association Meeting, Shanghai Jiaotong University Koguan Law School, Shanghai (Mar. 23, 2013)).

⁵² Constitutional and legislative sources do vow to protect ethnic minorities customs, although these powers are largely unexercised. *Zhonghua renmin gongheguo xianfa* (中华人民共和国宪法) [Constitution of the PRC], art. 4, sec. 4 (2004); *Zhonghua renmin gongheguo minzu quyu zizhifa* (中华人民共和国民族区域自治法) [Regional Ethnic Autonomy Law of the PRC], arts. 53, 10 (2001). *But see* Kate Kaup, Addressing Legal Pluralism in China's Southwest Minority Regions (on file with the author) (paper presented at the Law and Society Association Meeting, Seattle (May 28, 2015) (showing how state institutions have integrated customs of non-Muslim ethnic minorities).

⁵³ ERIE, *supra* note 8.

⁵⁴ On nonstate normative orders, *see* Paul Dresch, *Introduction: Legalism, Anthropology, and History: A View from Part of Anthropology*, in *LEGALISM: ANTHROPOLOGY AND HISTORY 1* (Paul Dresch & Hannah Skoda eds., 2012); ROBERT C. ELLICKSON, *ORDER WITHOUT LAW* (2009); Stuart Henry, *Community Justice, Capitalist Society, and Human Agency: The Dialectics of Collective Law in the Cooperative* 19 *LAW & SOC'Y REV.* 303 (1985).

private study sessions, textual translation, and cleric-led dispute resolution, Hui practice these rules outside of state institutions.⁵⁵ The domains of shari‘a most pertinent to Hui include marriage and divorce, but also property, inheritance, and aspects of ritual life, including prayer, cleanliness, and hygiene. One salient dimension of the ritual side of shari‘a, and one that generates commercial questions, is halal food.

Whereas halal food is principally an internal Hui question, because it touches on questions pertaining to the meat industry, hygiene, agriculture, and animal husbandry, as well as food quality and safety, it is an issue with broader ramifications for the Chinese public. Hence, from the view of the party-state, halal doubly warrants attention as it is both a religious symbol and economic activity, two domains where state interests remain foremost. The CCP was early to recognize the importance of halal food regulation for Hui communities. As early as 1955, state organs began issuing “instructions” (*zhishi*)⁵⁶ for managing halal meat.”⁵⁷ There are approximately twenty provinces that have written halal food management into their local adaptations of the “Regulation on Protecting Rights of Ethnic Minorities” or “Regulation on Protecting Rights of Dispersed Ethnic Minorities.”⁵⁸ Of these, twelve provinces have enacted “local regulations” (*difangxing fagui*) addressing halal food, and four provinces and cities have enacted “governmental

⁵⁵ ERIE, *supra* note 8.

⁵⁶ In this part, I name a number of normative sources of PRC law and policy. Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. COMP. L. 711 (1994) (providing a helpful overview of some of these different source of law and policy).

⁵⁷ *Shangwubu guanyu niuyangrou jingying zhong youguan Huizu fengsu xiguan de ji dian zhuyi shixiang de zhishi* (商务部关于牛羊肉经营中有关回民风俗习惯的几点注意事项的指示) [Instructions of the Bureau of Commerce on Matters Needing Attention Touching on Hui Social Customs and Habits Regarding the Management of [Producing] Cattle and Sheep Meat], promulgated by the Bureau of Commerce (Sept. 26, 1955).

⁵⁸ Mao Gongning (毛公宁) et al. eds., *Guoneiwai qingzhen shipin guanli falü fagui he zhengce huibian* (国内外清真食品管理法律法规和政策汇编) [Compilation of Domestic and Foreign Qingzhen Food Management Laws, Regulations, and Policies] (2006).

rules” (*zhengfu guizhang*).⁵⁹ These diverse regulations cover a number of areas, namely, establishing licensing systems for halal food production and management; qualifications for those engaged in the industry; protocols for supervision and records; and halal cafeterias in state “work units” (*danwei*), including schools.

A puzzle among these regulations is that whereas, on the one hand, they restrict the use of *qingzhen* as a symbol, term, or name on shop signs, packaging, transport vehicles, and so on, on the other hand, they vaguely define *qingzhen*. For example, the 2011 Ningxia Hui Autonomous Region Qingzhen Food Management Regulations state that those enterprises that have not gone through required approvals “shall not suspend the characters *qingzhen* or write characters to symbolize the meaning of *qingzhen* in their place of business, including the design [of the *qingzhen*] shop sign symbol, nor shall they use the *qingzhen* symbol, characters, or designs to symbolize the meaning of *qingzhen* on their manufactured product’s packaging.”⁶⁰ Yet in the regulations, besides basic quotas that Muslims should be involved in the production of *qingzhen* food, there are very few formal requirements to define *qingzhen*.⁶¹ There is no mention of the standards of halal under shari‘a, namely (1) requirements of ritual slaughter, including that the animal be

⁵⁹ *Id.* Among these, cities like Hohhot, the capital of Inner Mongolia Ethnic Autonomous Region, have enacted “specific regulations” (*danxing tiaoli*) on halal food regulation, and cities like Xining and Guangzhou have enacted governmental rules. As a comparative point, U.S. jurisprudence on the Free Exercise Clause and Equal Protection Clause of the U.S. Constitution has sought to determine when state institutions must make provisions for halal food. *See e.g., Patel v. U.S. Bureau of Prisons*, 515 F.3d 807 (8th Cir. 2008) (finding that federal prisons did not violate a Muslim prisoner’s religious rights when they provided kosher instead of halal meals).

⁶⁰ *Ningxia Huizu Zizhiqu qingzhen shipin guanli tiaoli* (宁夏回族自治区清真食品管理条例) [Ningxia Hui Autonomous Region Qingzhen Food Management Regulations], promulgated Nov. 7, 2002, as amended May 27, 2011 [hereinafter *Ningxia Autonomous Regulations*], art. 15.

⁶¹ There are a number of quotas put forth in different regulations. *See, e.g., Guanyu shengchan jingying qingzhen shipin bixu zunzhong shaoshu minzu fengsu xiguan de ruogan guiding* (关于生产经营清真食品必须尊重少数民族风俗习惯的若干规定) [The Certain Regulations Regarding Respecting Ethnic Minorities’ Social Customs and Habits in the Production and Management of *Qingzhen* Food], approved and promulgated by the Beijing Municipal People’s Government on March 29, 1988, art. 3.1 (specifying that among work units that sell on commission, 25% must be Hui, and among those that produce, no fewer than 10% of the employees must be Hui.)

alive at the time of the ritual, and the *shahada* dedication by the cleric or individual performing the slaughter; (2) a Muslim perform the slaughter; (3) draining of the blood; and (4) the prohibition on using animals that have been strangled or killed by a violent blow.⁶²

These are, in fact, the criteria by which Hui experts define *qingzhen*. For instance, a restaurateur in Lanzhou defined *qingzhen* as: “clean (*ganjing*), and has the following requirements: (1) a Muslim must have prepared the food, (2) money earned from *qingzhen* food must be legal (i.e., not stolen, forced, or cheated), (3) no one must be hurt in the making of *qingzhen*, (4) the environment must not be hurt in making *qingzhen*. Technically, the symbol can be understood to mean: (1) no alcohol, (2) no pork (*darou*), (3) the lamb must be properly slaughtered according to Islamic law (words and actions), and (4) proscriptions on eating certain things such as an animal that has already died or eating blood.”⁶³ The restaurateur’s understanding expands the core definition beyond the pork taboo showing its layered meanings, all of which are bound up in Hui notions of their religious law, with the symbol publicizing their religious law’s sanctification of the food to consumers.

Governmental regulations, however, define *qingzhen* reductively as “Hui social customs and habits,” as illustrated in the 1955 regulation.⁶⁴ This discursive frame has had remarkable durability.⁶⁵ As a consequence, there is line-drawing but without too much guidance as to what constitutes *qingzhen*. While most governmental pronouncements, like administrative regulations, define halal as ethnic custom or an “ethnic taboo” (*minzu*

⁶² MUHAMMAD IBRAHIM HAFIZ ISMAIL SURTY, HALAL FOOD IN THE LIGHT OF THE QUR’ĀN AND SUNNAH (AN OVERVIEW) (1995).

⁶³ Interview, Mar. 31, 2010.

⁶⁴ See *supra* note 57.

⁶⁵ See *supra* note 50.

jinji)—it is important to note that the party–state does not think with one mind. The China Islamic Association (CIA) has been a strong proponent of introducing language more sensitive to the religious basis of halal. For example, in contravention of the long-standing governmental definition, the CIA has stated that “*qingzhen* food means the edible and lawful food as permitted by Islamic law (*Yisilanjiaofa*); foreign Muslims call *qingzhen* food “halal,” that which is permitted by Islamic law.”⁶⁶ The CIA’s more religious definitions have failed to influence policy making. Rather, the state imposes penalties—from civil fines⁶⁷ to criminal liability⁶⁸—for violations of the state’s secular definition of *qingzhen*.

As the government conceptualizes halal food as a matter of ethnicity and religion, the relevant regulatory bodies are the State Ethnic Affairs Commission (SEAC) and bureaus of ethnic and religious affairs.⁶⁹ Yet because halal entails food production, marketing, and consumer protection, all of which are “secular” commercial matters, a number of governmental units, including the bureaus of industry and commerce, agriculture, transportation, and labor, have also issued rules regulating halal food. To complicate matters, the CCP has its own organs, namely the UFWD, which shapes policy

⁶⁶ The CIA cites the Qur’an. See *Qingzhen shipin shengchan biaoqun* (清真食品生产标准) [Qingzhen Food Production Standards], ZHONGGUO YISILANJIAO XIEHUI (中国伊斯兰协会) [China Islamic Association], (May 23, 2012), <http://www.chinaislam.net.cn/cms/sxjs/qzsp/201205/23-228.html>.

⁶⁷ Fines have increased steadily in the course of China’s economic reforms. *Id.* art. 4.1 (stating that those who produce *qingzhen* food without going through proper approvals shall be fined 200 yuan (\$29) and those who violate requirements shall be fined 100 yuan (\$15)). *But see* Ningxia Autonomous Regulations *supra* note 60, art. 37 (imposing a fine of 1,000 to 10,000 yuan (\$145 to \$1,450) on anyone who arbitrarily uses the *qingzhen* symbol).

⁶⁸ Ningxia Autonomous Regulations, *supra* note 60, art. 47.

⁶⁹ Yukari Sai & Johan Fischer, *Muslim Food Consumption in China: Between Qingzhen and Halal*, in HALAL MATTERS: ISLAM, POLITICS AND MARKETS IN GLOBAL PERSPECTIVE 160 (Florence Bergeaud-Blackler et al. eds., 2015).

in ethnic minority areas in accordance with the CCP line⁷⁰ and the CIA, an organization that functions as a liaison between the CCP and Muslim citizens.⁷¹ The PRC answer, then, to the question of government regulation over religion, in the case of halal food, has been to manage it through secular rules administered by ethnic and religious affairs bureaus, and the CIA. One result of both the decentralization of administrative regulations and the plurality of agencies has been discoordination, a chronic problem in China's legal development: legal centralization under administrative decentralization.⁷²

The main problem, of who has the authority to certify halal in a socialist state that does not recognize religious law (e.g., shari'a), is reflected in the symbol of *qingzhen*.⁷³ Worldwide, there are a number of models for halal food regulation, including privatized, coregulatory, or compliance. China has a certification approach that is characteristic of its food industry more generally.⁷⁴ Based on my interviews with Hui halal restaurants and factory owners, the first step under this arrangement is for Hui entrepreneurs to apply to the relevant ethnic and affairs bureau. This process involves the legal representatives of the enterprise showing their identity cards, which proves their ethnicity and thus their

⁷⁰ JUNE TEUFEL DREYER, CHINA'S FORTY MILLIONS: MINORITY NATIONALITIES AND NATIONAL INTEGRATION IN THE PEOPLE'S REPUBLIC OF CHINA 96 (1976) (explaining that the UFWD provides recommendations to the SEAC that then implements those policies).

⁷¹ Matthew S. Erie, *Shari'a in China: State, Ahong, and the Postsecular Turn*, 12 CROSS-CURRENTS: E. ASIAN HIST. & CULTURE REV. 88 (2014).

⁷² Wei Cui, *The Legal Maladies of 'Federalism, Chinese-Style,' in THE BEIJING CONSENSUS? HOW CHINA HAS CHANGED THE WESTERN IDEAS OF LAW AND DEVELOPMENT* 97 (Chen Weitseng ed., 2017).

⁷³ While *qingzhen* is the loadstar of Islamic symbols in China, there are others that have become politicized in recent years. Traditional Uyghur dress and beards have been restricted in Xinjiang, and the Hui hijab has become the focus of public controversy. James Leibold & Timothy Grose, *Islamic Veiling in Xinjiang: The Political and Societal Struggle to Define Uyghur Female Adornment* 76 CHINA J. 78 (2016). Beyond Islam, in the southeastern city of Wenzhou in 2015, a number of Christian crucifixes were razed along with churches in what the local authorities called an exercise in urban renewal. See *Wo jiu xiang wenwen Tianya de pengyou? Ninmen dui Jidujiao de shizijia fangan ma?* (我就想问问天涯的朋友？你们对基督教的十字架反感吗？) [I Just Want to Ask Tianya Friends, Do You Oppose the Christian Cross?], TIANYA (天涯) [Far Corners of the Earth] (Sept. 15, 2015), <http://www.bjhp217.com/t/133601>.

⁷⁴ John Kojiro Yasuda, *Why Food Safety Fails in China: The Politics of Scale*, 223 CHINA Q. 745, 753 (2015); Zhou Guanqi, *The Regulatory Regime of Food Safety in China: A Systemic Not Accidental Failure*, at 65, 124 (May 2016) (unpublished Ph.D. dissertation, University of Adelaide), <https://digital.library.adelaide.edu.au/dspace/bitstream/2440/100197/2/02whole.pdf>.

ability to make or sell halal. Subsequently, they may have to obtain similar approvals at the relevant hygiene bureau and environmental protection bureau. They then submit these documents to the local bureau of industry and commerce from whom they obtain a halal certificate. Indicating the jurisdictional conflict between the regulatory agencies, there are alternate means. In some areas, like the Ningxia Hui Autonomous Region, Hui entrepreneurs obtain final approval from the Qingzhen Office (*qingzhenban*) under the SEAC. The CIA provides yet a third route that requires Hui entrepreneurs to compile a number of official documents that they must then mail to the CIA in Beijing.⁷⁵

Subsequent to certification, it is the responsibility of the ethnic and religious affairs bureau to supervise the production of the halal food. According to the relevant regulations, this entails intermittent monitoring in the form of site visits and inspections, usually conducted by a representative of the ethnic and religious affairs bureau or a cleric designated by the CIA. The role of the clerics is key, since they have developed trust with Hui vendors and not only inspect but also provide general advice.⁷⁶ During such visits, the investigator checks all equipment, machinery, and piping, as well as raw materials, food additives, production processes, warehouse space, and vehicles for distribution and sale to ensure that the food is halal. In the event that, for instance, pork was discovered on the premises, then the investigator sterilizes the area. The investigator must inspect each

⁷⁵ *Shenqing banli qingzhen jianzhi, renzheng (chuju hala zhengshu) de chengxu* (申请办理清真监制, 认证 (出具哈拉证书) 的程序) [The Procedure for Applying for and Handling a Certification Document for Supervising the Manufacture of Qingzhen (Issuing a Halal Certificate)], *Zhongguo Yisilanjiao Xiehui* (中国伊斯兰教协会) [CIA] (July 17, 2013), <http://www.chinaislam.net.cn/cms/qingzhenrenzheng/201307/17-5474.html>.

⁷⁶ The lack of trust between auditors and food producers is one reason why the state's formal "organic" certification program failed. JOHN KOJIRO YASUDA, *ON FEEDING THE MASSES: AN ANATOMY OF REGULATORY FAILURE IN CHINA* (2018).

chain in the production process traveling sometimes across the country to each location to ensure that standards are met.⁷⁷

Yet Hui I spoke to pointed to numerous shortcomings in the certification system. Misuse of the symbol *qingzhen* also gives rise to pragmatic problems. Given that Chinese (Hui and Han) recognize the halal symbol as a marker of higher standards of hygiene, there is a profit incentive for some Hui to circumvent the official certification process or for non-Muslim Han to open so-called halal restaurants or companies. A common scheme is for a Han and Hui to enter a “joint venture” through which the Hui partner becomes the face of the enterprise and derives a portion of the profit but who may be an absentee manager, and those producing the food are Han, a situation that violates PRC policy and shari‘a. As the organizer of a “halal food professional association” (*qingzhen shipin hangye xiehui*) told me in Xining, “for ten so-called *qingzhen* restaurants that open, nine do not have approval from the Bureau of Religious Affairs and the [local] Islamic Association. Of these, several will sell alcohol.”⁷⁸ Alternately, some Hui sell their halal certificate to other Hui or Han. Furthermore, supervision and monitoring can be weak. Or, Hui admitted to kickbacks. Historically, it has been relatively easy for Hui (or Han) entrepreneurs to simply place a *qingzhen* symbol outside their storefront and on the basis of trust in that symbol, attract business.

IV. Global *Qingzhen* Inc.?

⁷⁷ Sai & Fischer, *supra* note 69, at 165.

⁷⁸ Interview, Xining, July 31, 2016. The selling of alcohol in so-called *qingzhen* restaurants has been a focus of Hui protest for years. One cleric in Xining, in particular, had led a number of campaigns against the selling of alcohol in Hui areas.

Regulatory problems are particularly felt by Hui entrepreneurs who are the main proponents of the halal food industry in China. Hui entrepreneurs assume a variety of business forms. The most prevalent, found nearly everywhere in China, are single proprietorships, namely, restaurants, noodle stalls, and grocery stores. These enterprises are often owned by one family and dot Hui communities and multiethnic cities in Hui districts of majority Han urban cores. In addition, in the course of China's economic reforms, Hui have incorporated halal businesses forming limited liability companies, both state owned and private. As of 2013, per capita net income in the halal industry was 5,700 yuan (\$826), which is almost three times the revenue of the average Hui in Linxia or "China's Little Mecca" in 2010.⁷⁹ There were some 10,744 halal restaurants in 20 provincial capitals and 200 subprovincial capital cities and towns, employing over 50,000 people and earning approximately 800,000,000 yuan (\$116,000,000).⁸⁰

Although fewer than single proprietorships, halal food companies are growing in number in northwest China. In Ningxia, for example, the Ningxia Yiwei Qingzhen Food Ltd. Company (hereinafter "Yiwei") was established in 2004 as a state-owned company and is China's largest halal food company. Operating a 4,000 square meter state-of-the-art food processing plant in Yinchuan, the capital of Ningxia, Yiwei has an annual sales volume of 10,000,000 to 50,000,000 yuan (\$1,450,000 to \$7,200,000).⁸¹ Outside of Linxia in Gansu province, a halal food company, privately owned by a Hui family, that I

⁷⁹ Renzhe Shengui (忍者神龟), *Zhuanzi Zhongmuwang: Qingbang weihe ruci xiaozhang, lamian zhi zheng, zhi ren siwang* (转自中穆网：青帮为如何此嚣张，拉面之争，致人死亡) [Forwarded from China Muslim Net: Why Is the Green Gang This Arrogant, Noodle Fights Lead to Death], BAIDU (百度) [One Hundred Degrees](Oct. 18, 2015), <https://tieba.baidu.com/p/4108598507>; ERIE, *supra* note 8, at 116 (identifying the average income as 1,000 to 2,000 yuan (\$145 to \$290) per month in Linxia).

⁸⁰ Renzhe Shengui, *supra* note 79.

⁸¹ *Ningxia Yiwei Qingzhen Shipin Youxian Gongsi* (宁夏伊味清真食品有限公司) [Ningxia Yiwei Qingzhen Food Ltd. Company], SHIPIN SHANGWU WANG (食品商务网) [Food Merchant Net], <http://www.21food.cn/company/show-yiweishipin.html> (last visited June 1, 2017).

will call “Linxia Qingzhen,” has over 200 employees and raises, slaughters, and packages all of its own beef and mutton, selling 300 tons of prepared meat per year for profits of 4,000,000 to 5,000,000 yuan (\$580,000 to \$725,000) per year.⁸² Companies, such as Yiwei and Linxia Qingzhen, produce packaged meats, dairy products, and even cookies that are distributed to food stores and supermarkets throughout China. For the most part, these companies are aware of both state regulations and the requirements of shari‘a, and comply with both sets of standards.

The domestic market has reached a level of maturity whereby Hui entrepreneurs have started to export their *qingzhen* products. However, inadequate regulation is an acute problem in regards to the export of *qingzhen* foods to Muslim countries. While China’s halal market has grown cautiously by about 10% per annum, as of 2009, global volume of trade in halal food was \$150 billion, China in that year had only \$100 thousand in halal exports, comprising less than 1% of worldwide numbers.⁸³ In 2013, global trade reached \$500 billion, and yet China’s trade did not reach 0.5% of that figure.⁸⁴ The Chinese government has, since 2012, under the “Belt and Road Initiative,” announced a number of infrastructural and investment projects in Central Asia, the Middle East, and South Asia. Some twenty-eight of the sixty-four states that belong to the Belt and Road Initiative are Muslim majority populations, and Hui have sought to piggyback on the state-led initiative to increase exchange with coreligionists outside of China. Given the shortage of agriculture and livestock resources to feed growing

⁸² Personal observation, field notes, 2010.

⁸³ *Zhuanjia renwei “Yidaiyilu” wei Zhongguo qingzhen shipin chanye dailai juda shangji* (专家认为“一带一路”为中国清真食品产业带来巨大商机) [Experts Believe That the “One Belt One Road” Will Bring Significant Business Opportunities for the Qingzhen Food Industry], XINHUA WANG (新华网) [Xinhua Net] (Aug. 14, 2015), http://news.xinhuanet.com/fortune/2015-08/14/c_1116261812.htm (quoting Dr. Wang Guoliang, Vice-Secretary-General of the CIA).

⁸⁴ *Id.*

populations in the Middle East, for instance, Saudi Arabia, Qatar, and the Gulf Cooperation Council are projected to import \$53 billion of halal by 2020.⁸⁵

There is thus demand for halal food made outside of traditional Muslim heartlands, and yet Hui face impediments in developing the halal export industry chiefly for two reasons. First, on the production side, despite such initiatives as the Belt and Road, the state is concerned about Islamic terrorism and consequently impedes most forms of cross-border ties between Muslims in China and coreligionists abroad. Thus, Hui have encountered roadblocks in participating in the initiatives.⁸⁶ For instance, whereas the halal food companies promote the development of halal exports, and lobby their local governments, to date, they have had uneven success. The Ningxia Hui Autonomous Region, one center of Islamic revival in China, has accounted for much of China's halal export. In the first three quarters of the 2014 fiscal year, for instance, Ningxia exported 295 tons of halal lamb and beef meat for a total of \$2.5 million,⁸⁷ although one member of the industry was adamant that gains were a fraction of what they could be with proper certification.⁸⁸ Among Gansu companies, the percentage of Linxia Qingzhen's profits hover between 0 and 20% per annum.⁸⁹ There is a glass ceiling to China's halal industry. The fundamental rule of Chinese governance is that political stability trumps economics; consequently, security concerns supersede state attempts to

⁸⁵ *Regulating the Sacred: Why the US Halal Food Industry Needs Better Oversight*, THE CONVERSATION (Nov. 21, 2014), <http://theconversation.com/regulating-the-sacred-why-the-us-halal-food-industry-needs-better-oversight-34108>.

⁸⁶ Matthew S. Erie, *Sharia, Charity, and Minjian Autonomy in Muslim China: Gift Giving in a Plural World*, 43 AM. ETHNOLOGIST 311 (2016).

⁸⁷ Anon., *Ningxia Qingzhen Shipin Chanye Guojihua Jincheng Jiasu* (宁夏清真食品产业国际化进程加速) [The Process for Speeding Up the Internationalization of the Ningxia Qingzhen Food Industry], NINGXIA ZHAOSHANG WANG (宁夏招商网) [Ningxia Investment Attraction Net] (Oct. 20, 2014), <http://nx.zhaoshang.net/2014-10-20/208692.html>.

⁸⁸ Interview, Yinchuan, July 26, 2016.

⁸⁹ Interview, Linxia, May 2, 2010.

facilitate China's integration into the global halal market. Second, on the consumer side, foreign markets are concerned about the quality of food made in China. For the export sector generally, enterprises must meet strict licensing requirements.⁹⁰ Still, China has suffered a series of highly publicized food scandals in recent years that have affected demand for Chinese food exports,⁹¹ and the government is particularly concerned about souring relations with Muslim countries.

For Hui, the lack of government support causes what they perceive to be the main obstacle to halal made in China: the inability to obtain internationally recognized certification. In conducting fieldwork in Hui centers such as Ningxia and Gansu, I came across a number of attempts to gain international certification. In Yinchuan, the capital of the region, Hui established a Ningxia Qingzhen Food International Certification Center in 2014.⁹² The Center has modeled itself on efforts in Southeast Asian countries and the United Kingdom and France, to develop uniform standards for certification for the domestic halal market, and then to promote these internationally. Although there is no single international standard for halal, certain certificate systems are more broadly recognized than others. For example, the Hazard Analysis and Critical Control Point (HACCP) is used by many Muslim communities in South Asia, Europe, and elsewhere. The HACCP is not in itself sufficient to prove halal, but it nonetheless provides guarantees that the ingredients used in the product are what the labels portend. Another popular international standard is that of the Malaysian Department of Islamic

⁹⁰ See YASUDA, *supra* note 76, at ch. 4.

⁹¹ *Id* at 54.

⁹² Hong Yue (洪越) ed., *Qingzhen shipin nan chuguomen weisha shuo chukou yingli jiu chayibu* (清真食品难出国门为啥说出口盈利就差一步) [It's Hard to Export *Qingzhen* Food Products—Why [Experts] Say Export Profits Are Falling], YANGGUANG WANG (央广网) [Central Expanse Net] (Sept. 5, 2015), http://country.cnr.cn/focus/20150905/t20150905_519768178.shtml.

Development (MDID). In 2013, Linxia Hui established the Gansu Linxia Qingzhen Food Certificate Center, under the prefectural-level ethnic affairs commission, which claims to have a memorandum of understanding with MDID, although it is unclear how much supervision MDID provides.⁹³ The failure of the halal export industry highlights how halal food regulation in China lags behind nonhalal food. Whereas the Certification and Accreditation Administration (CAA) has adopted the Global Agricultural Practice (hereinafter “Global GAP”) certification scheme as “China GAP,”⁹⁴ the government has not done so for halal food. To summarize, Hui interpretations of the symbol of *qingzhen* as the core of their internal rules do not translate into state regulation, particularly when that state understands *qingzhen*, in the context of cross-border exchange between Chinese and foreign Muslims, as a sign of danger signifying the potential for Islamic terrorism. In the following part, I turn to the effects of heightened Islamophobia on the “filter,” to use Habermas’s term, between public opinion and state law and policy.

V. The Spread of Halal

In the last few years, given an environment characterized by the semiotic excess of *qingzhen* and poor regulatory oversight, there has been a heightened concern over the proliferation of the *qingzhen* symbol in public spaces in China. Hui and Han both experience this concern but in different ways. Among Hui, there is an anxiety that some

⁹³ Site visit, Linxia, Aug. 4, 2016. *Malaixiya yisilan fazhanshu (JAKIM) renzheng shenqing shouli han* (马来西亚伊斯兰发展署 (JAKIM) 认证申请受理函) [Malaysian Department of Islamic Development (JAKIM) Letter for Accepting to Gear a Case for an Application for Certification], GANSU LINXIA QINGZHEN SHIPIN RENZHEN ZHONGXIN (甘肃临夏清真食品认证中心) [Gansu Linxia Qingzhen Food Certificate Center] (Apr. 29, 2015), <http://www.lxhalal.com/typenews.asp?id=386> (showing the MDID acknowledging receipt of the Center’s application for certification, but not an approval letter).

⁹⁴ See YASUDA, *supra* note 76, at 112.

pork-contaminated food enters their foodway, an anxiety that is not without warrant.⁹⁵ This is far from a simple fear, as many Hui believe it is only their abstention from pork that makes them Muslim and differentiates them from Han. Among Han, the flipside of Hui fear is that *qingzhen* is a marker of the Islamicization of Chinese society and government, the Chinese equivalent of shari‘a creep. This fear has less evidence but traction for governmental policy. In this part, I examine the causes for the spread of halal controversy, laying the groundwork to understand how Hui responded to this fear by mobilizing official channels for legal protection and the pushback against their attempts, a reaction that I understand as one against a kind of taboo.

The spread of halal phenomenon is a result of the increase in the number of halal restaurants, factories, hotels and other facilities, and consumables. From the Han perspective, the ubiquity of the *qingzhen* symbol contaminates secular space. Han bemoan the selling of such commodities that do not require the halal symbol such as *qingzhen* bottled water.⁹⁶ In particular, they condemn the imposition of *qingzhen* categories over “neutral” public spaces, such as roads or public toilets, for instance, that are situated in close proximity to mosques.⁹⁷ There is some evidence that there is a very small minority of Muslims in China who indeed proselytize an assertive form of Islam, not only within in-group communities, but beyond into Han ones, in part, through reference to proliferating the *qingzhen* symbol.

Recently, the *da‘wa* (“invitation”) movement, a propagandist version of Islam originating in South Asia, has made inroads into northwest China. Hui devotees advocate a return to the ways of the Prophet Muhammad, and so, for instance, reject the use of

⁹⁵ See *infra* text accompanying note 99.

⁹⁶ Interviews, Yinchuan, July 30, 2016.

⁹⁷ *Id.*

chopsticks for eating with one's hands "as the Prophet did." Exponents have had some success in promoting their cause, and I have met Han who converted to Islam through their exposure to *da'wa*. While members are almost wholly apolitical, their goals are less integration into Chinese society, and more demarcating Muslim society from non-Muslims. They do this through spreading *qingzhen* symbols, but also establishing informal schools, speaking Arabic and Farsi, and wearing traditional modes of dress. Yet nonmembers, Han and Hui, to different degrees, have viewed their presence as threatening.

As opposed to the Han interpretation of the spread of halal, Hui assert that the controversy is, at its most basic, not a manifestation of Islamic neofundamentalism, but rather a symptom of the commercialization of Chinese society, with parties (Muslim and non-Muslim) trying to maximize their personal interests through material profit. The commodification of halal is one symptom of the commercialization of Islam throughout Muslim societies—majority or minority.⁹⁸ A result is the dilution of *qingzhen*. Because selling halal is profitable, the supply of halal restaurants is significant and, consequently, competition is feverish, and can lead to violations of both state law and shari'a. Some of these transgressors are smaller companies that are not as tightly regulated as the larger companies that have regional and national distribution.

Health scandals have electrified Hui communities and illustrate how weak regulation, including such public functions as safety notifications, can negatively impact the delicate equilibrium that exists between minority groups, the majority, and the state. For example, while conducting fieldwork in northwest China, I heard of a small company

⁹⁸ JOHAN FISCHER, *PROPER ISLAMIC CONSUMPTION: SHOPPING AMONG THE MALAYS IN MODERN MALAYSIA* (2009) (explaining the commercialization of halal in Malaysia).

in Zhangye, Gansu, that allegedly produced some 180 tons of lamb meat mixed with pork, and that had entered the Hui foodway. According to social media, the company had illegally obtained a halal certificate.⁹⁹ As the public alert system in the region is quite nascent, unofficial media and gossip were the main sources of information about the “fake halal” (*jia qingzhen*) case. This caused acute anxiety among many Hui I spoke to who did not know if the mutton in their refrigerator or on their dinner table was contaminated. Suddenly, certain restaurants or whole districts of multiethnic cities were suspected of selling the contaminated meat, and Hui avoided them. This response chilled interethnic relations in certain areas in Gansu.¹⁰⁰

While food insecurity exacerbates interethnic relations in northwest China, it can equally lead to intra-ethnic tensions. In the 2016 noodle mafia case in Shanghai that begins this article, Xian Guolin was a Hui from Gansu, and the Hui who attacked him were from Qinghai. Qinghai Hui and Gansu Hui have had a rivalry over beef noodles that is decades old. Shortly after the “opening and reform,” Hui from Hualong Hui Autonomous County in Qinghai received governmental subsidies to develop their beef noodle industry and have done so remarkably, often at the expense of Gansu Hui who originated the dish. The government helped establish “noodle associations” (*lamian xiehui*) that are found throughout Hui areas but are particularly well organized in Qinghai. While the noodle associations have no formal grant of authority to enforce state law and policy, as *minjian* organizations, they enforce *minjian* law, such as the 400-meter

⁹⁹ Qie Suiyuan (切随緣), *Hewei qingzhen: Ji Gansu sheng Zhangye shi jia qingzhen shipin an gei women Musilin de* (何谓清真：记甘肃省张掖市假清真食品案给我们穆斯林的) [What Is the Meaning of Qingzhen? A Record of the Fake Qingzhen Case from Zhangye City in Gansu Province and What It Gave Us Muslims], XINLANG BOKE (新浪博客) [Blog.sina.com] (July 2, 2010), http://blog.sina.com.cn/s/blog_5f24c5230100jp3x.html.

¹⁰⁰ Personal observation, Sept. 2, 2010.

rule. While most accounts of the noodle mafia did not identify them as members of the Qinghai Noodle Association, the mob's function was analogous—to enforce standards internal to the Hui group and, more specifically, as shared by those in the noodle-pulling profession. Some Hui believed that this was why not only the characters “*qingzhen*” but also those for “beef noodle” were taken down as a result of the police-led mediation.

There are precedents for such methods of private enforcement. To take one example, in March 2015, a Lanzhou-based company called Eastern Palace Restaurant Group opened two restaurants in Suzhou with the name “China Lanzhou Beef Noodle.” After the restaurants’ opening, a mob of Hui attacked and destroyed one store. After the police were called and disbursed the crowd, Eastern Palace Restaurant Group tried again to open the shop and met the same violent protest. The protesters were members of the Qinghai Noodle Association in Suzhou.¹⁰¹ In the crucible of beef noodle competition, Hui attachment to natal place gains particular resonance. Just as *qingzhen* is a metasymbol for all Hui, “Lanzhou beef noodles” or “Qinghai beef noodles” are regional signifiers. The semiotic expressions are, in Hui eyes, a type of intellectual property. Informal networks operate to protect such property, particularly in the absence of state law.

Still, it is the potential for the spread of halal to incite interethnic violence and social instability that has alarmed the government. To be accurate, violent relations between Muslims and non-Muslims are nothing new in China.¹⁰² For instance, on October 29, 2004, in Zhongmu county in Henan province a large-scale violent incident occurred between Hui and Han when a Hui taxi driver struck and killed a Han girl. The

¹⁰¹ See Renzhe Shengui, *supra* note 79. The response by the Qinghai Hui was in the context of a massive expansion by the Eastern Palace Restaurant Group that opened some 100 chain restaurants in Beijing alone. In addition to the Suzhou restaurant, one in Shenzhen was similarly attacked.

¹⁰² GLADNEY, *supra* note 9.

Hui rebuffed the girl's parents' request for compensation, and soon the two families were at fisticuffs that quickly snowballed into thousands of Hui and Han attacking each other with farm tools. Hui mobilized their networks, and more Hui arrived from neighboring provinces but were stopped by police blockades. The Henan provincial government imposed martial law but only after some 148 people were killed, including 18 police officers.¹⁰³ Visiting the town a few days after the incident, I saw a numb landscape wreathed in the red banners of government propaganda promising *ex post* "harmonious society."

Whereas Hui–Han tension has been a constant in many areas in China, over the last few years, there has been a different valence to Han attitudes toward Hui. Since at least the July 5, 2009 riot in Urumqi, Uyghurs have experienced discrimination in employment and education in what they refer to as "inner China." Han associate Uyghurs with terrorists, and also with thieves, the uneducated, and uncouth or "low quality."¹⁰⁴ In recent years, these categories have broadened. Borrowing from anti-Muslim sentiment globally, a tidal wave of Islamophobia has swept up Hui as well.¹⁰⁵ To date, most of the Islamophobia is discursive and produced on the Internet and social media;¹⁰⁶ Han have not physically attacked Hui (although physical confrontations between Han and Uyghurs

¹⁰³ YANQI TONG & SHAOHUA LEI, *SOCIAL PROTEST IN CONTEMPORARY CHINA, 2003–2010* 130 (2014).

¹⁰⁴ Whereas I have frequently heard Chinese interlocutors say, "there is no such thing as racism in China," the Muslim minority experience shows otherwise. FRANK DIKÖTTER, *DISCOURSE OF RACE IN MODERN CHINA* (1992) (providing a history of the concept of race in China).

¹⁰⁵ See Chang, Chung-fu, *Is China Islamophobic? A Survey of Historical and Contemporary Problems, in* ZHENGHE FORUM: CONNECTING CHINA AND THE MUSLIM WORLD 97 (Ma Haiyun et al. eds. 2015); Mu Chunshan, *Anti-Muslim Sentiment Is Taking Over China's Social Media Scene*, THE DIPLOMAT (Sept. 13, 2016), <http://thediplomat.com/2016/09/anti-muslim-sentiment-is-taking-over-chinas-social-media-scene/>; James Leibold, *Creeping Islamophobia: China's Hui Muslims in the Firing Line*, 16 CHINA BRIEF (June 20, 2016), <https://jamestown.org/program/creeping-islamophobia-chinas-hui-muslims-in-the-firing-line/>.

¹⁰⁶ In December 2016, the opening of a mosque in Hefei incited Han protest, exacerbated by anti-Muslim Weibo comments by an official in Xinjiang, and a pig's head was buried at the construction site. See Gerry Shih, *Unfettered Online Hate Speech Fuels Islamophobia in China*, AP NEWS (Apr. 10, 2017), <https://apnews.com/e3711d789c8d48589b77f6e269d424fa>.

are not uncommon in Xinjiang and elsewhere). China's online Islamophobia appears to be reproduced through the interaction of a few incendiary Han "intellectuals" and anonymous grassroots voices, the two responding to each other and accelerating the severity of their respective positions. The spread of halal concern has become the lightning rod for such pronouncements.

One of the exponents of Islamophobic views is Xi Wuyi. Xi, formerly based at the Chinese Academy of Social Sciences (CASS) where she was a scholar initially in religious studies and then in Marxist thought, was dismissed from CASS around 2013. Since then, through her account on Weibo, she has generated a steady stream of anti-Muslim vitriol. One of her common tactics is to juxtapose commentaries on news related to Hui or Uyghur with accounts of terrorist attacks in Europe or reportage on violence committed by Daesh. Through her media bricolage, Xi has constructed a narrative of China's Islamicization. For instance, in response to a protest in August 2016 in Pingliang, Gansu province, during which Hui protested the selling of pork in a supermarket, Xi accused the protesters of violating article 81 of the Counter-Terrorism Law, which defines extremism as "Forcing others to participate in religious activities . . . [and] Using methods such as intimidation or harassment to interfere with others from having contact with or living with persons . . . who believe in other religions."¹⁰⁷ Such commentaries frame Hui acts as threats against the secular order.

Xi has condemned scholars who have proposed ways for state law to provide limited recognition of shari'a. For instance, regarding a 2015 article written by Yang

¹⁰⁷ Xi Wuyi (习五一), *Gansu Pingliang Xinminlu Xinshijie Chaoshi (feiqingzhenshi) weisha buneng mai zhurou* (甘肃平凉新民路新世界超市 (非清真市) 为啥不能卖猪肉) [Why Can't the Non-Halal Supermarket New World Market in Pingliang, Gansu, Sell Pork], WEIBO (微博) [Micro-Blog] (Aug. 3, 2016), original post has been deleted, available, in part, at <https://tieba.baidu.com/p/4709514067> (citing PRC Counter-Terrorism Law, art. 81, cls. 1, 3).

Guoju,¹⁰⁸ a scholar at Ningxia University, she wrote, “The judicial activities of so-called restorative justice in Hui-inhabited areas have become drawn into Islamic law. This is a plot of rebellion!”¹⁰⁹ Actually, Yang’s article was an attempt to underscore the potential for alternative dispute resolution¹¹⁰ to close the gap between state law and what he called “Islamic culture.”¹¹¹ “Islamic law” appears only once in the essay.¹¹² Yang’s writing on Islam is anodyne; the article is hardly a shari‘a manifesto.

Yet Xi’s relentless framing of any recognition of the value of Islam in public life in China as Islamicization has goaded her netizen followers, who number near 113,000. Comments calling for Hui to “go back to the Middle East” are common, along with claims that China is suffering a “green revolution” (as the color is associated with Islam); still others called for a “boycott” of Islam that they said is “like garbage.”¹¹³ A popular essay on social media asserts that by 2078, the Muslim population in China will exceed half the entire population and concludes apocalyptically that “China shall not be China” (*Huaxia jiang buzai shi Huaxia*).¹¹⁴ Similarly, posts on Weibo pervert the sacred symbols of Hui by showing photo-shopped images of giant cartoon pigs lying on top of the *kaaba* in the Masjid al-Haram with the title “very good, very *qingzhen*” (*hen hao hen*

¹⁰⁸ Yang Guoju (杨国举), *Huizu juju diqu huifuxing sifa de lujing xuanze* (回族聚居的地区恢复性的路径选择) [Selecting a Method for Restorative Justice in Hui-Concentrated Areas], 4 HUIZU YANJIU (回族研究) [Hui Research] 87 (2015).

¹⁰⁹ Xi *supra* note 107.

¹¹⁰ The PRC has used “people’s mediation” in mosques to delegate responsibilities for dispute resolution at the local level to clerics. Xi has attacked this practice as an invasion of Islamic law into the role of the state.

¹¹¹ Yang, *supra* note 108, at 89.

¹¹² *Id.* at 91 (describing Islamic law as the integration of religious doctrine, moral norms, and the legal system).

¹¹³ Matthew S. Erie, *In China, Fears of ‘Creeping Sharia’ Proliferate Online*, FOREIGN POLICY (Sept. 15, 2016), <http://foreignpolicy.com/2016/09/15/in-china-fears-of-creeping-sharia-proliferate-online-muslims-islam-islamophobia/>.

¹¹⁴ Jisi Guanyi (集思广益), *Zhongguo de Yisilanhua: 2078nian, women jiang biancheng* (中国的伊斯兰化：2078年，我们将变成) [China’s Islamicization: By the Year 2078, We Will Change], RENRENWANG (人人网) [People Net] (Mar. 29, 2016), <http://blog.renren.com/share/227140057/3254697141>.

qingzhen).¹¹⁵ Other Weixin texts, while also written in Chinese, do not address the spread of halal controversy explicitly; instead, they reproduce anti-immigrant messages from outside of China, to lament, for instance, the impacts of immigrants from Côte d'Ivoire in France, an example of Chinese Islamophobes borrowing from global streams of anti-Muslim rhetoric.¹¹⁶

The toxicity of the text, images, and signs that stem from xenophobia are a far cry from Habermas's theory of communicative action that rests on rationality.¹¹⁷ For Habermas, in order for society to cohere, arguments must be based on valid truth claims that can be verified or criticized.¹¹⁸ The Chinese Internet and social media sphere demonstrate the opposite: fallacious yet emotive signs and symbols in the public sphere build master narratives that promote not freedom but intolerance. In the eyes and social media posts of certain Han, *qingzhen* is a taboo, not against pork, but against secularism. Valeri, following Douglas, observed that taboo is motivated by a perceived danger that elicits fear.¹¹⁹ It is centrally the Han perception of the sanctity of the *qingzhen* symbol to Hui that they seize upon it as taboo to the Han nationalist state. *Qingzhen* is profane (to Han secularism) precisely because it is sacred (to Hui cultural religiosity). Hate speech has particular impact in Chinese popular media because of the absence of freedom of speech, and one wonders why the government, which prioritizes social stability, would

¹¹⁵ *PETA Yazhou Kafeilai Baohu de Weibo* (PETA 亚洲卡菲勒保护的微博) [Weibo of PETA Asian *Kafir* Protection], WEIBO (微博) [Micro-blog], (Sept. 29, 2016), accessed Sept. 30, 2016, this account has since been removed from Weibo.

¹¹⁶ See, e.g., Yin Gang (殷罡), *Ouzhou zheng jingli disanci Yisilan zhongji* (欧洲正经历第三次伊斯兰重击) [Europe Has Experienced Precisely Three Islamic Attacks], GONSHI WANG (共识网) [Consensus Web], 2015, accessed Aug. 17, 2016, the post has since been removed from the Internet.

¹¹⁷ JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION: VOLUME 1 REASON AND THE RATIONALIZATION OF SOCIETY* 8 (1984).

¹¹⁸ *Id.*

¹¹⁹ See VALERI *supra* note 45, at 46.

allow such hate speech to flourish.¹²⁰ The making of *qingzhen* as a “public controversy”¹²¹ in Chinese society opens the door to nativist views affecting policy. Before assessing the impacts of *qingzhen* on religious and ethnic policy, I first turn to the Hui response to the problem of the spread of halal.

VI. From Taboo to Law (and Back)

Whereas the foregoing accounts illustrate the types of social stability concerns that have historically animated PRC law and policy,¹²² this part examines Hui responses to the spread of halal problem, as these responses demonstrate the foreclosure of state law to arguments that promote Muslims’ rights, some of which are based on shari‘a. Different members of China’s multiethnic society understand the spread of halal issue in registers of religion, commerce, and ethnicity, some of which are more innocuous in the eyes of the state than others, but which nonetheless overlap. Yet because of the religious element of the question and because Hui themselves are cast by their opponents as motivated singularly by religion (and, specifically, radical forms of Islam), Hui attempts to find redress have, in turn, increased Islamophobic pushback.

Hui have responded to the spread of halal problem through a number of means; chief among these is by resorting to official channels to demand more state regulation, specifically, a “halal food management law” (*qingzhen shipin guanli fa*). While, as mentioned above, there are a number of halal food regulations at the provincial level, autonomous region level, and below, there is as of yet no nationwide halal food

¹²⁰ See Leibold, *supra* note 105 (noting that offensive online posts are sometimes not censored). Many Hui I spoke to believe in the theory that there are factions within the CCP that stoke interethnic tension with the goal to discredit Xi Jinping.

¹²¹ See GÖLE, *supra* note 11.

¹²² SARAH BIDDULPH, *THE STABILITY IMPERATIVE: HUMAN RIGHTS AND LAW IN CHINA* (2015).

regulation law. In this, China is no different from the United States¹²³ or United Kingdom, and thus a successful appeal for legislation would be remarkable not just in the China case, but for comparative cases of Muslims in secular states.

In calling for legislative protection over *qingzhen*, Hui have looked to two types of bodies to represent their interests. The first is the people's congresses and the second is the Chinese People's Political Consultative Conference (CPPCC). In China's administrative structure, the National People's Congress (NPC) is the main legislative body and, according to the Constitution, the supreme lawmaking authority.¹²⁴ People's congresses exist at each administrative level (e.g., provincial or autonomous region, prefectural, county, municipal). Hui work with their local level congresses to introduce "proposals" (*ti'an*) for consideration to draft as legislative bills. Hui often work with members of the people's congress who are themselves Hui. Likewise, Hui submit proposals to the CPPCC, a consultative body composed of representatives who are not members of the CCP, including religious and ethnic leaders. Similar to people's congresses, the CPPCC has provincial, prefectural, and county-level committees, and Hui have existing connections with CPPCC members based on common ethnicity and religion, natal place, and doctrinal affiliation.

Since 2002, Hui have lodged their arguments with these representative organizations for greater legal guarantees in truth-in-labeling and consumer rights. These "policy entrepreneurs"¹²⁵ come from a number of sectors in the Hui population, especially those from Qinghai, Gansu, and Ningxia, and include restaurateurs,

¹²³ In the United States, nine states (California, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, Texas, and Virginia) have passed laws regulating the labeling and or selling of halal.

¹²⁴ See PRC Constitution, *supra* note 52, art. 58.

¹²⁵ ANDREW C. MERTHA, CHINA'S WATER WARRIORS: CITIZEN ACTION AND POLICY CHANGE (2008).

businesspeople looking to expand the domestic market and increase foreign export in halal, professional associations (both “noodle” and “halal food”), clerics, teachers, and Hui cadres.

Every year, the NPC and CPPCC hold a series of “two meetings,” at each administrative level culminating in national-level plenary sessions in Beijing. During these meetings, lower levels “pass up” proposals to the higher-level one, culminating in the Beijing sessions during which delegates set out the legislative agenda for the upcoming year. In reality, the CCP has a strong hand in forming this agenda, at each level, as it issues work reports upon which the representative bodies deliberate. Hui complained that the CCP has historically struck down any legislative initiatives in Muslim-concentrated areas, namely, the Xinjiang Uyghur Autonomous Region and the Ningxia Hui Autonomous Region. In submitting proposals, Hui advocates walk a fine line between using the language of the CCP and grounding their rights in shari‘a in their translation of their taboo into state law.

One proposal, drafted on February 19, 2011, by members of the Linxia City CPCC in Gansu, and supported by Hui members of the NPC and CPPCC in Beijing, made it all the way to the “proposal legal system committee” (*ti’an fazhi weiyuanhui*), the body under the CPPCC that collects proposals for consideration for drafting. However, the proposal encountered obstacles, and the Bureau of Religious Affairs rejected it. In my conversations with authors of the document, they were adamant that “religious law cannot exceed state law” (*jiaofa bu neng chaoguo guofa*).¹²⁶ In part, the language of the document reflects this secular preference. It begins, “The normalization and legalization of halal food management implements the plan of ‘ruling the country according to law’ . .

¹²⁶ Interview, August 4, 2016, Linxia.

. Halal dietary habits (*qingzhen yinshi xiguan*) are the commonly-followed customs of all those who believe in Islam, the world over.”¹²⁷ The proposal includes recommendations such as

Enact the “Halal Food Management Regulations” according to the provisions of the state Constitution . . . confirm the basic principles of the legislation and base the [proposed legislation] on the legitimate principles of halal food, that is, the principle of “halal” (lawful). Halal’s legitimacy rests on the basic rules of Islam’s main scripture, the Qur’an. Halal food is made in accordance with those Islamic beliefs as commonly held by Muslims as enshrined in Islamic law (*Yisilanjiaofa*).¹²⁸

For the most part, the language reproduces state rhetoric (e.g., former PRC President Hu Jintao’s slogan of “ruling the country according to law”) and cites the Constitution as the supreme law of the land. However, in addition to the Constitution, it also cites the Qur’an and then names Islamic law as the basis for rules for halal food. Even more ambitious, the proposal makes the recommendation to revise the PRC Criminal Law to include, “Impose criminal responsibility on those who commit the unlawful behavior of, for the purpose of obtaining illegal interests, using food that is taboo to Muslims in so-called Muslim food, and thereby harm social stability and endanger unity.” While the Ningxia Autonomous Regulations include a provision for

¹²⁷ *Guanyu jinkuai chutai “Qingzhen shipin guanli tiaoli” de jianyi an* (关于尽快出台“清真食品管理条例”的建议案) [Advisory Case Regarding the Soon-to-Be Considered “Halal Food Administrative Regulation”], Feb. 19, 2011 (on file with author).

¹²⁸ *Id.*

criminal liability,¹²⁹ suggesting such language for national-level legislation is problematic from the view of the state, for reasons I examine below.

Leading up to the 2016 two meetings, there was a concentrated effort by Hui to promote a “halal food management law” and indeed, a draft made it to the People’s Government of Qinghai Province, where Hui business associations are particularly strong. From there, the draft was submitted to the State Council, the highest-level administrative organ of the PRC government, and then to the NPC. Visiting with a prominent cleric in Xining, I was able to see another proposal for national legislation that inspired the draft and was an even more pronounced example of the difficulties of appealing to two legal orders, one secular and the other religious, in drafting legislation.

This proposal begins with the statement “Halal food is ‘the center of the center’ of the entire nation’s food safety,”¹³⁰ thus aligning the state’s interests with those of the Hui and tapping into national introspection regarding its own food safety. In a didactic fashion, the cleric’s proposal asserts, “In recent years, people take ‘dietary customs’ (*yinshi xisu*) as the basis for halal food, but this is mistaken. The basis is the Qur’an that specifies that food must be ‘lawful,’ meaning in accordance with the rules of ‘Islamic law’ (*Yisilanfa*).” Here, the cleric, who is a member of the Yihewani,¹³¹ corrects the state’s Marxist–Leninist discourse, with its lexicon of “customs” and “habits” and instead, reasserts the centrality of the Qur’an and shari‘a. The proposal goes on to make an economic argument, that “halal food safety maintains the entirety of the New Silk

¹²⁹ Ningxia Autonomous Regulations, *supra* note 60, art. 47.

¹³⁰ *Quebao qingzhen shipin anquan weihu minzu tuanjie hemu* (确保清真食品安全维护民族团结和睦) [Ensuring Qingzhen Food Safety, Protect Ethnic Unity and Harmony], Feb. 9, 2016 (on file with author).

¹³¹ Hui practice Islam in a number of so-called “teaching schools” (*jiaopai*) including the traditionalists, the Sufis, Salafis, and the Yihewani, which has an ideological if not genealogical link to the al-Ikhwan al-Muslimun (Society of Muslim Brothers) although such equivalences are problematic given that the teaching schools are not only exposed to multiple and successive waves of reform but continually diverge in their own interpretations of doctrine and law.

Road Economic Belt,”¹³² referring to the Belt and Road Initiative. The economic argument may find a more receptive audience among certain state officials, eager to promote China’s ties with Muslim states outside of China, but the balance of the proposal’s language emphasizing Islamic law negates such arguments.

If neither the religious nor the commercial arguments achieve their aims, then Hui have experienced a modicum of success in framing their rights to halal as “ethnic customs,” the preferred category of the state. The 2015 case of *Ningxia New World Motor Vehicle Sellers Service Ltd. Co. v. Ma Mei* is one of the few instances where a PRC court recognized a right to halal under a “customary law” argument.¹³³ In that case, the Higher People’s Court of the Ningxia Hui Autonomous Region found that Ningxia New World Motor Vehicle Sellers Ltd. Co. breached a rental agreement with a Hui woman when its non-Muslim employees used appliances in her apartment, namely, a refrigerator and microwave, which she had marked as not for use, to prepare pork. In its decision, the court wrote that “by preparing pork and other non-halal food, [the employees had] violated Muslim social customs and habits (*Musilin de fengsu xiguan*) which constitutes a contract breach.”¹³⁴ The ethnicization of Hui rules is a hallmark of Chinese governance in such communities, and sidelines any arguments based on shari‘a. Still, even such recognition is limited, as it occurs in the Ningxia Hui Autonomous Region where Hui have enjoyed relatively high levels of religious freedom, and such decisions have not been replicated elsewhere in the country. For the most part, Hui advocacy for greater

¹³² *Id.*

¹³³ *Zai shen shenqingren Ningxia Xin Shijie Qiche Xiaoshou Fuwu Youxian Gongsi yu bei shenqingren Ma Mei fangwu zulin hetong jiufen zai shenqing minshi caidingshu* (再审申请人宁夏新世界汽车销售服务有限公司与被申请人马梅房屋租赁合同纠纷再审申请民事裁定书) [Civil Affairs Ruling on the Retrial of Applicant Ningxia New World Motor Vehicle Sellers Service Ltd. Co. v. Respondent Ma Mei Housing Rental Contract Dispute], Ningxia Hui Autonomous Region High Court, Dec. 22, 2015, <http://wenshu.court.gov.cn/content/content?DocID=ec45268c-3ce1-40d7-b84a-e5e510386395&>.

¹³⁴ *Id.*

legal protection of halal, whether framed in terms religious, commercial, or ethnic terms, remains stymied by state law's reluctance to recognize religious law.

The government has, in response to the problem of the spread of halal, tried to weigh religious minorities' rights against public concerns about the perceived Islamicization of the Chinese state and society. The state has acknowledged that the spread of halal problem has "become the major hidden danger inciting events influencing ethnic unity."¹³⁵ In February 2014, five governmental units including the Office of the Food Safety Committee under the State Council, the SEAC, the General Administration of Quality Supervision, Inspection, and Quarantine, the China Food & Drug Administration (CFDA), and the CAA jointly published the Notice Regarding Standardizing Qingzhen Food Production and Management Activities (hereinafter "2014 Notice").¹³⁶ The 2014 Notice makes a number of recommendations. First, the government agencies recognize that the system for halal food standards and assessments for certification "lag behind,"¹³⁷ and notes that the SEAC and the CAA must coordinate to develop a certification system for halal food in China in accordance with the PRC

¹³⁵ Bai Yu (白羽) ed., *Guojia Minwei youguan zeren ren jiu qingzhen shipin guanli wenti da jizhewen* (国家民委有关责任人就清真食品管理问题答记者问) [Leading Cadres of the State Ethnic Affairs Commission Answer Reporters' Questions Regarding Qingzhen Food Management], XINHUA WANG (新华网) [Xinhua Net] (May 31, 2016), http://news.xinhuanet.com/politics/2016-05/31/c_1118965317.htm.

¹³⁶ Guowuyuan Shipin Anquan Ban (国务院食品安全办) [Office of the Food Safety Committee Under the State Council], *Guowuyuan shipin anquan ban deng bumen guanyu guifan qingzhen shipin shengchan jingying huodong de tongzhi* (国务院食品安全办等部门关于规范清真食品生产经营活动的通知) [Office of the Food Safety Committee under the State Council and Other Departments' Notice Regarding Standardizing Qingzhen Food Production and Management Activities], SHIPIN HUOBAN WANG (食品伙伴网) [Food Mate] (May 29, 2014), <http://www.foodmate.net/law/shipin/182970.html>.

¹³⁷ Ma Hucheng (马虎成), *Woguo qingzhen shipin jianzhi zhidu chutan* (我国清真食品监控制度初谈) [An Initial Discussion Regarding China's Qingzhen Food Supervision System], ZHONGGUO YISILANJIAO XIEHUI (中国伊斯兰教协会) [CIA] (Oct. 14, 2014), <http://www.chinaislam.net.cn/cms/jingjizhichuang/201410/14-7357.html>.

Regulations on Certification and Approval (hereinafter “Certification Regulations”).¹³⁸

Second, the 2014 Notice calls for increasing the strength of the halal food production and management regulatory system. Third, the 2014 Notice guarantees to “massively strike and penalize” illegal halal food production, specifically by imposing severe penalties on those who affix the *qingzhen* symbol to nonhalal food. Fourth, the 2014 Notice calls for improvements in the organizational leadership for halal supervision work, mainly by coordinating across agencies and between administrative levels.

To date, however, there have been few substantive changes in the system with the exception of the amendment of the Certification Regulations in 2016. The amended Certification Regulations do not explicitly mention halal, but they do introduce several changes that may address aspects of the problem. Whereas “organs capable of issuing certification documents” had been privatized in the course of China’s food safety reforms, the amended Certification Regulations require that “at least ten specialized certification personnel in the related field” work at the organ¹³⁹ and clarified that “style, characters, and name” of organs’ certification symbols cannot violate law, administrative regulations, or social morality.¹⁴⁰ While these changes improve food safety throughout the industry, they may address some of the issues in the spread of halal problem, namely, by requiring certification companies to employ Muslim experts, and to provide oversight for use of the *qingzhen* symbol, although social morality may militate against *qingzhen* altogether.

¹³⁸ Guowuyuan (国务院) [State Council], *Zhonghua renmin gongheguo renzheng renke tiaoli* (中华人民共和国认证认可条例) [PRC Regulations on Certification and Approval] Nov. 1 2003.

¹³⁹ *Id.* art. 10(5).

¹⁴⁰ *Id.* art. 26.

On balance, law and policy appear to have responded more to anti-Muslim rhetoric than Hui arguments. In the aftermath of the April 2016 “two meetings,” when halal food legislation was introduced, Wang Zhengwei, a Hui from Ningxia, and the Chairman of the SEAC, was removed from office. Wang, who had been dubbed the “imam of the Party,” was a long-time promoter of greater integration between the Chinese economy and that of the Middle East, and he had championed the halal food management law. Wang’s removal was not necessarily a demotion, however, as he was moved to the position Vice Chairman of the CPPCC, and has since been active in China–Middle East and China–Africa relations. Nonetheless, Wang’s move paved the way for proponents of a harder line toward Muslim policy, namely, Zhu Weiquan, the Director of the Ethnic and Religious Affairs Committee of the CPPCC, an official who some have suggested is the patron of Xi Wuyi.

Also, for the first time, state agencies have explicitly prohibited invoking shari‘a as a basis for halal food regulation in China in favor of state law and policy. In May 2016, the SEAC, now headed by an ethnic Mongolian and career CCP member, issued a statement that “the government strictly defines halal food as a custom of muslim [sic] people, rather than food conforming to Islamic Sharia, in a bid to prevent religion from interfering with secular life.”¹⁴¹ Subsequently, the announcement has been followed by a number of official statements urging “proper use” of the halal term so as to prevent “some foreign forces [from] selling their malicious ideas of pan-Islamism and desinicization in a bid to sabotage China’s national security, social stability, and unity

¹⁴¹ Huaxia ed., *China to Check Halal Food*, XINHUA WANG NEWS (June 1, 2016), http://news.xinhuanet.com/english/2016-06/01/c_135402665.htm.

among ethnic groups.”¹⁴² Consequently, in early 2017, the CIA issued a series of notices prohibiting companies from issuing halal certification in an effort to arrest the production of the public symbol of *qingzhen*.¹⁴³ Public debate had been earlier quashed when the government closed the website 2muslim.com, a popular online discussion list for all matters Islamic in China, in December 2016. A user based in the United States posted an online letter to Xi Jinping that foresaw a “Jasmine Revolution” in China, the term for China’s aborted Arab Spring.¹⁴⁴ Typical of the “race to the bottom” in the public sphere, Xi Wuyi then used screenshots of the online letter to claim that separatists in Xinjiang supported the site.¹⁴⁵ The closing of the 2muslim.com website exemplifies a wider trend to debilitate domestic and transnational discussions about Islam, and religion more generally, in China.¹⁴⁶ Yet, anti-Muslim rhetoric proceeds apace, as in the example of the public backlash in July 2017 against the Meituan Waimai (Meituan Takeaway) food delivery app that provided separate halal delivery boxes to customers. Han Chinese decried such efforts as “reverse discrimination” and Meituan discontinued the service.¹⁴⁷

¹⁴² Shan Jie, *Official urges proper use of ‘halal’ term*, GLOBAL TIMES (Mar. 13, 2017), <http://www.globaltimes.cn/content/1037543.shtml> (quoting Xiong Kunxin, professor of ethnic studies at Beijing’s Minzu University of China.)

¹⁴³ Zhongguo Yisilanjiao Xiehui (中国伊斯兰教协会) [CIA], *Guanyu bu zai xuqian qingzhen jianzhi xieyi shiwu gongzuo de tongzhi* (关于不再续签清真监制协议事务工作的通知) [General Affairs Work Notice Regarding No Longer Renewing Qingzhen Manufacturing Supervision Agreements] (Feb. 17, 2017) (announcing that, first, the China Islamic Association, would no longer receive applications for agreements to supervise halal manufacture and, second, the Yili Group’s agreement, that had expired, would not be renewed). See also CIA, *Guanyu tingzhi qingzhen jianzhi renzheng shiwu gongzuo de tongzhi* (关于停止清真监制认证事务工作的通知) [General Affairs Work Notice Regarding Suspending Documentation for Qingzhen Manufacturing Supervision] (Feb.17, 2017) (prohibiting issuing any permission for companies to provide halal certification documents).

¹⁴⁴ AFP News Agency, *Chinese Muslim Website Blocked After Xi Jinping Letter*, ALJAZEERA, <http://www.aljazeera.com/news/2016/12/chinese-muslim-website-blocked-xi-jinping-letter-161214134354018.html>.

¹⁴⁵ *Id.*

¹⁴⁶ See Revised Draft of the Religious Affairs Regulations, *supra* note 50.

¹⁴⁷ Alex Linder, *Angry netizens deleting Meituan en masse after delivery app introduces separate boxes for halal food*, SHANGHAIIST.COM (Jul. 19, 2017), <http://shanghaiist.com/2017/07/19/meituan-halal-controversy.php>.

Conclusion

Talal Asad has taken issue with post-Enlightenment thinkers like Habermas as well as anthropologists in his approach to secularism. For Asad, far from Habermas's view of secularism as a political doctrine of neutrality, the secular, rather, was an epistemic category that precedes secularism and that is always shifting in a certain relation to "religion." In Asad's critique, the study of religion, including the anthropology of religion, has developed out of the construction of the secular, with its corollaries of democracy, science, and human rights. For Asad, taboo was a discursive construct of early anthropologists from which they extrapolated the notion of the "sacred," and which stood, in binary opposition to the modern or the secular.¹⁴⁸

While Asad's constructivism is overreaching (people may actually attribute meaning to a taboo, meaning that predates the modern state and its totalizing discourses), his polemic opens up a way to think about the relationship between shari'a and state law through taboo. The modern state is constituted through law, not only in terms of constitution, statutes, courtrooms and judicial benches, and law schools, but also through a certain notion of modern law as the guarantor of the secular, its institutions, and discourses. The contemporary state, constituted through the secular, is made possible by the integrating effects of law, particularly in plural societies, as it is state law that transcends particularistic attachments to native place, religion, ethnicity, and so on. Yet in the "age of anger,"¹⁴⁹ the current climate of hypernativism has spawned a more pernicious form of secularism, shifting the consequences of the doctrine yet again. Under

¹⁴⁸ See ASAD, *supra* note 17, at 31.

¹⁴⁹ PANKAJ MISHRA, AGE OF ANGER: A HISTORY OF THE PRESENT (2017).

this form, populist discontent, much of it incited by antiglobalization that identifies Muslims and immigrants as the cause of social anomie, incites the state to aggressively redefine the contours of religion, in this case, Islam, and to nullify its law, all in the name of secularism.

If the state is constituted by secular law and secular law is increasingly amenable to anti-Muslim influences, then, extending Valeri's thought, shari'a pollutes the integrity of the modern state.¹⁵⁰ Like consuming rock badgers under the abominations of Leviticus¹⁵¹ or allowing certain species of frogs to enter one's house under the rules of the Huauilu,¹⁵² following shari'a is dangerous under state law. Shari'a is at once sacred to Muslim minorities yet profane to the sensibilities of secular law. Hence, from the United States to France to the Netherlands, shari'a threatens disorder to the secular, and its guarantor of state law. It is that which cannot be named, used, worn, argued, or consulted.

The spread of halal, which elicits fear and loathing for both Hui and Han—for different reasons—in China illustrates how shari'a, through its arch symbol *qingzhen*, is perceived to pollute the sanctity of the socialist state. Given this state of affairs, how are informed publics to respond to these perceptions and misperceptions, and specific to China, how can the state address the spread of halal issue? In what follows, I suggest some tentative paths for future research that may have policy outcomes. First, information is the threshold issue. In a period in which news is "fake" and the very possibility of objectivity called into question, public education takes on renewed urgency. In particular, academic knowledge production must close the gap between elite

¹⁵⁰ Even Muslim majority countries, such as twentieth-century Egypt, provide evidence for this claim. See ASAD, *supra* note 17, at 210.

¹⁵¹ See DOUGLAS, *supra* note 12, at 51.

¹⁵² See VALERI *supra* note 45, at 60.

institutions and popular opinion; this is especially so in regards to educating non-Muslims about shari‘a. While there are projects to start such conversations,¹⁵³ the robustness of the public sphere is largely influenced by the form of political organization the state assumes. In nondemocratic states like China, Muslim scholars work with government departments to educate officials as to the meaning of *qingzhen* with the intention that the officials will then be informed in interfacing with the public. Such efforts can be extended while also discrediting those reports that use bad data to incite interethnic strife.

Second, and shifting from public opinion to legal recognition, as to the technical matter of conflicts of law, if shari‘a is deemed to be polluting by state constituents, then one response is to refrain from legal recognition altogether and, rather, to consider its substance under secular categories. This has been the suggestion of scholars such as John Bowen in the U.K. context, where courts have recognized the legal effects of a shari‘a judgment as pertaining to marriage contracts.¹⁵⁴ In the China case, one of the common rebuttals to drafting a halal food management law is that it then requires one for China’s other minority groups (e.g., Tibetans, Mongols, etc.), a slippery slope that leads to balkanization of law. Consequently, instead of protecting Muslim rights to halal through a law named as such, their interests could be subsumed under current food safety regulation. In recent years, a number of scandals, such as tainted infant milk formula and contaminated toothpaste, have galvanized the public to demand better food safety regulation. China’s food safety administration is evolving in tandem with the challenges of domestic consumption but also the export market. In 2013, the CFDA was

¹⁵³ See, e.g., SHARIAsource, HARVARD LAW SCHOOL, <https://beta.shariasource.com>.

¹⁵⁴ See, e.g., Bowen, *supra* note 29, at 422–23 (citing *Uddin v. Choudhury* [2009] EWCA Civ. 1205). See also *Jones v. Wolf*, *supra* note 25 (finding that a civil court must “scrutinize the [religious] document in purely secular terms”).

reconstituted, and two years later, the Food Safety Law was amended, becoming the strictest food law in Chinese history, centralizing the regulation of food production under the CFDA and imposing a number of controls and liabilities on wayward food production practices that cause loss in consumer confidence. The CFDA, one of the agencies behind the 2014 Notice, has started to more tightly integrate halal food production into its system of controls, and this is a trend that should be encouraged.

Third, secular states should approach private enterprise and civil society as stakeholders to increase the fairness of governance over religious issues rather than as sources of competition or subversion. By way of comparison, the U.S. kosher industry, after a period of weak government enforcement and corruption, saw, in the second half of the twentieth century, the emergence of third-party agencies, which were not members of the industry itself, and who issued and enforced regulatory standards.¹⁵⁵ They do so through their own identifiable symbols that they use for front-of-package nutrition labeling, which garners trust in consumers, and by revoking certification from manufacturers in the event they violate food standards and thus depriving those companies from market access.¹⁵⁶ The “big five” kosher certification companies certify over 80% of kosher food produced in the United States.¹⁵⁷ Today’s China looks in many ways like 1970s America. Private certification agencies are gaining prominence, but they are still subject to heavy yet uneven government regulation.

One result of what Hui perceive as such faulty regulatory is the emergence of third-party monitoring in the form of *minjian* “halal food professional associations,” as in

¹⁵⁵ TIMOTHY D. LYTTON, *KOSHER: PRIVATE REGULATION IN THE AGE OF INDUSTRIAL FOOD* (2013).

¹⁵⁶ *Id.* at 68, 118, 148.

¹⁵⁷ *Id.* at 74.

the example of the one in Xining.¹⁵⁸ Such associations operate not through governmental oversight, but through what they call “self-discipline” or what is called in other jurisdictions “self-regulation.”¹⁵⁹ It is not uncommon for restaurants in Xining to have two sets of certificates, one from the official agencies (e.g., the religious affairs bureau of a local Islamic association) and the other from the professional association. The professional association has a high degree of trust among Hui entrepreneurs and consumers because they do their own site inspections, ensuring the halal vendor is compliant with state law and shari‘a. Nonetheless, the presence of dual authorities in the halal kitchen can waste resources. While a fully privatized model of third-party certification may not accord with China’s transitional economy, wherein the state continues to play a conspicuous role, greater support for *minjian* organizations may lead to tighter regulation of halal food production.¹⁶⁰

A combination of the above suggestions for future research and possible recommendations may attune the halal food industry to both the necessity of clear regulation in a period of anti-Muslim sentiment and to the demands of the globalizing halal market. In brief, whereas the symbol *qingzhen* may continue to be a taboo for Hui against consuming pork, a realization of their particular ethno-religious identity in Chinese society, there is no need for shari‘a to be taboo to modern law. As a religious law, it is “matter out of place”¹⁶¹ in state legal systems. A return to secularism-as-neutrality is impractical, as shari‘a and state law continue to respond to and transform

¹⁵⁸ See *supra* text accompanying note 78.

¹⁵⁹ See Lytton, note 155, at 131.

¹⁶⁰ Jacob A. Klein, *Everyday Approaches to Food Safety in Kunming*, 214 CHINA Q. 376 (2013). A parallel case is that of environmental protection where the state has ceded considerable authority to environmental nongovernmental organizations (NGOs). See, e.g., Jonathan Schwartz, *Environmental NGOs in China: Roles and Limits*, 77 PAC. AFFAIRS 28 (2004).

¹⁶¹ See DOUGLAS, *supra* note 12.

each other. Rather, a robust informational sphere, reliance on secular law for many issues that may fall under religious law, and the prominent role of private enterprise and civil society may help curb the more corrosive effects of the current system. China may be an extreme example of a system whereby anti-minority discourse may affect formal law and policy at the expense of institutional protections for religious rights of minorities; nonetheless, as shades of xenophobic and anti-immigrant sentiment filter into law-making in liberal states eliciting anxieties about the purity of modern law and the nation-state, the taboos of modern Chinese law present a stark cautionary tale.