

A Deep History of Chinese Shareholding

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Among the many changes set in motion by the intensification of Chinese engagement with Western Europe in the decades following the Opium War was a transformation in the role that law was understood to play in the private realm. As scholars have long noted, Chinese imperial law, exemplified by the Great Qing Code, governed a wide range of criminal, administrative, and family matters, but left the regulation of most economic transactions to the normative realm and private contractual ordering.¹ During the final decades of the nineteenth century, the absence of a

1. The standard critique of the Qing Code as a body of penal law may be found in Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases (Harvard Studies in East Asian Law)* (Cambridge, MA: Harvard University Press, 1967). For a discussion of those aspects of the Qing Code that did deal with economic issues see Junjian Jing, "Legislation Related to the Civil Economy of the Qing Dynasty," in *Civil Law in Qing and Republican China*, ed. Philip Huang and Kathryn Bernhardt (Stanford, CA: Stanford University Press, 1994), 42–84. William Jones (trans.) with the assistance of Tianquan Cheng and Yongling Jiang, *The Great Qing Code* (Oxford: Clarendon Press, 1994), provides a translation of the statutes of earlier codes as adopted and adapted by the Qing dynasty, but as yet, no translation includes all of the modifying statutes adopted during the course of the dynasty.

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“civil law,” legible to foreigners doing business with Chinese, and generative of the large scale industrial investment viewed by Chinese as the source of foreign success, gave rise to a discourse of Chinese legal deficiency that formed a key component of the Chinese legal reform project during the last years of the dynasty.² The most dramatic response to this discourse was an exercise in legal transplantation. In 1904, the Qing dynasty promulgated a company law, modeled on elements of both German and British law, intended to stimulate public investment in large-scale industrial projects and move the empire closer to release from the grip of consular jurisdiction/extraterritoriality.

Despite the expectations of reformers, small business, family firms, single proprietorships, and partnerships continued to dominate the Chinese business landscape. Although China was by no means an outlier in this respect,³ the law and its later revisions have been the subject of numerous studies linking the reluctance of Chinese business to take advantage of incorporation to a presumed cultural aversion to impersonal investment, coupled with shortcomings in the law and the court system’s ability to support it.⁴ This study proposes a shift in our attention away from legal transplantation to the indigenous practices that the new law was meant to

2. For a discussion of the late nineteenth-century Self-Strengthening Movement during which provincial official leadership dominated the move toward greater investment in mining, manufacturing, and mechanized transportation, see David Faure, *China and Capitalism, a History of Business Enterprise in Modern China* (Hong Kong: Hong Kong University Press, 2006), 45–64. Albert Feuerwerker, *China’s Early Industrialization; Sheng Hsuan-Huai (1844–1916) and Mandarin Enterprise (Harvard East Asian Studies)* (Cambridge, MA: Harvard University Press, 1958) remains the classic study of this movement.

3. On the dominance of the partnership form in the United States case, see Naomi R. Lamoreaux, “Constructing Firms: Partnerships and Alternative Contractual Arrangements in Early Nineteenth-Century American Business,” *Business and Economic History* 24 (1995): 43–71; and “Partnerships, Corporations, and the Theory of the Firm,” *The American Economic Review* 88 (1998): 66–71. More recent studies have challenged the superiority of the corporation as a globally superior form of business organization, focusing on intermediate forms available under the civil law regimes of Europe. See, for example, Timothy Guinnane, Ron Harris, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal, “Putting the Corporation in Its Place” *Enterprise & Society* 8 (2007): 687–729.

4. Among the studies that trace the background to the implementation of the law, its deficiencies as a legal transplant, and the low rate of legal incorporation among early twentieth-century Chinese firms, see William C. Kirby, “China Unincorporated: Company Law and Business Enterprise in Twentieth-Century China,” *The Journal of Asian Studies* 54 (1995): 43–63; and Billy K. L. So and Albert S. Lee, “Legalization of Chinese Corporation, 1904–1929: Innovation and Continuity in Rules and Legislation,” in *The Treaty Port Economy in Modern China: Empirical Studies of Institutional Change and Economic Performance*, ed. Billy K. L. So and Albert S. Lee (Berkeley, CA: Institute of East Asian Studies, 2011), 186–210. William Kirby, citing Albert Feuerwerker, puts the number of registered companies in 1908 at only 227.

supplant. The development of a robust tradition of shareholding in the space vacated by state regulation in China is itself of intrinsic interest. Customary practices offered Chinese businesspeople a rich menu of options that could effectively substitute for many of the critical functions of the corporation. That this tradition not only continued, but occasionally challenged the principles embodied in that law and the reformulations of shareholding that accompanied it suggests the possibility that transplantation of company law suffered from more than inadequate replication of Western practice.

The history of shareholding in late imperial China is offered in part as a contribution to the growing literature on investing with strangers in preindustrial world history, which has expanded our understanding of the diverse sources of new legal and economic institutions in the era of early capitalism.⁵ The late imperial history of Chinese shareholding provides a particularly rich opportunity to explore the often unexpected sources of Chinese business practices, many of which have their cognates in Western commercial law. At the same time, shareholding and the partnership practices honed in the commercializing centers of late imperial China continued to shape business well into the twentieth century. While not denying the challenge presented by Western business models and the pressures exerted on China by what some have called its semicolonial condition, it is useful to remember that the vast majority of Chinese merchants continued to operate within a market in which foreign interests had little role. At the same time, those who came to navigate the new globalized marketplace did so with a large set of tools that included both indigenous practices and new ways of understanding the implications of those practices in communication with new laws, new business partners, and new and distant markets. As a prelude to a larger study in progress that explores the intersection of Western-inflected legal reform and Chinese merchant practice in the early years of the twentieth century, this article seeks to understand the indigenous development of an essential component of modern business: shareholding investment.

The Chinese shareholding practices that will be discussed were crafted of cultural material familiar to students of China drawn from religion, kinship, and law and mediated by commonly held understandings of human relationships and obligations. We know of these practices because they were frequently memorialized in the form of contracts, family and guild rules, and other unofficial documents that provide evidence of a robust tradition of private ordering. Although the state had little interest in setting the

5. See, for example, the papers produced for the workshop “Funding Business in the Pre-Industrial World” held at Yale University in May 2015 and the continuing project and web site on “Funding of Business” hosted by the University of Utrecht.

rules of the game for those who entered into partnerships or were simply passive investors in shares, it nevertheless gave force to the private ordering functions of the documents they wrote by accepting these documents' legal significance in dispute resolution. By the time of the last dynasty, magistrates routinely accepted private contracts as evidence in their courts and continued to recognize the expertise of merchant associations on the commonly accepted practices of business.⁶

This study examines the context within which a Chinese shareholding tradition took shape, and argues that by the late imperial period, shares were well established as abstract income-producing assets that could be bought and sold, establishing the possibility of partnership relationships that could be both impersonal and long-lived despite the absence in China of a formal commercial law. That this tradition did not lead to the emergence of an analogue to the corporation in the West raises new questions about the demand for and functions served by the corporation and the continued numerical dominance of partnership within the early twentieth-century Chinese business community.

Constructing Partnership in Imperial China

Three factors shaped what by the sixteenth century became the framework within which Chinese people pooled resources to pursue profit. The first was the authority accorded written agreements throughout China's long history. The second was a culturally embedded tradition of collective ownership of assets, both physical and abstract. The third was the specific practices of long-distance traders united by common native place.⁷

6. Maura Dominique Dykstra, in "Complicated Matters: Commercial Dispute Resolution in Qing Chongqing from 1750 to 1911" (PhD Diss., University of California, Los Angeles, 2014), 333, rightly notes that when magistrates referred cases back to merchant guilds for mediation this was not because they deemed business cases too unimportant to merit their time, but rather because they considered guilds to be equally capable forums for dispute resolution. I would go one step further and argue that they considered the associations that represented merchants to be the source of expertise in matters that were not located in the code. The continued authority of customary shareholding practices is reflected in the frequent reliance of Republican period courts on advice from Chambers of Commerce in interpreting the expectations of parties to partnership agreements and the recognition of Chamber Adjudication Offices as alternative venues for resolving business disputes. Madeleine Zelin, "Merchant Dispute Mediation in Twentieth Century Zigong, Sichuan," in *Civil Law in Qing and Republican China*, ed. Kathryn Bernhardt and Philip C. C. Huang (Stanford, CA: Stanford University Press, 1994), 276–77.

7. Trade and investment based on native place ties has received considerable attention from scholars of China, emphasizing their domination of particular trades and the provision

Valerie Hansen traces the use of written agreements in China to the blood covenants between states in the seventh and sixth centuries BCE.⁸ Even if we discount the direct impact of these ancient practices on later and private actors, it is clear that the use of written contracts played a prominent role in China in establishing the terms of transactions.⁹ Ritualized statements and enactments served to establish confidence in the efficacy of the written document.¹⁰ In the Song period (960–1279), the production of standardized land deeds by the state, and in later periods, attempts to certify deeds by the addition of government stamps and seals, added to their authority even when these state endorsements were sidestepped in an effort to avoid taxation. It is no accident that one of the most closely guarded possessions of a late imperial farm family was their accumulated land and other property agreements.¹¹ Hundreds of documents memorializing loans, the sale and lease of land, sale of goods, hiring of labor, household division, and marriage have survived from the early dynastic period. The paper fragments preserved at Dunhuang in China's dry northwest raise the number of such materials dramatically from the fifth to the eleventh

of communal social services through native place associations in major trading cities. See, for example, William T. Rowe, *Hankow, Commerce and Society in a Chinese City, 1796–1889* (Stanford, CA: Stanford University Press, 1984); and Madeleine Zelin, "Chinese Business Practice in the Late Imperial Period," *Enterprise & Society* 14 (2013): 769–93.

8. Valerie Hansen, *Negotiating Daily Life in Traditional China: How Ordinary People Used Contracts, 600–1400* (New Haven, CT: Yale University Press, 1995), 7. Hansen's contractual evidence relates to debt and property relations and not pooling of resources for business purposes.

9. The importance of contracts as evidence in land disputes dates at least to the middle ages and is memorialized in the Great Qing Code's Article 93 directives on how to determine the existence of a conditional sale. The role of contract in the structuring of business relationships and as the foundation for establishing claims in business and property litigation is a central theme of many of the articles in Madeleine Zelin, Jonathan K. Ocko, and Robert Gardella, *Contract and Property in Early Modern China* (Stanford, CA: Stanford University Press, 2004).

10. These traditions may date back to the ritual offerings made to the God of Wealth by merchants at the beginning of the year. See Richard Von Glahn, "The Enchantment of Wealth: The God Wutong in the Social History of Jiangnan," *Harvard Journal of Asiatic Studies* 51 (1991): 651–714.

11. Even today, despite the toll that wars and revolution took on family documents, scholars and more commercially minded collectors of family documents continue to turn up troves hidden away in what we might think of as private archives. Cao Shuji of Jiaotong University in Shanghai heads a large-scale project to preserve such materials. Noting in conversation that almost every farm household in China had a wooden box for contracts and other documents, Cao likened his database to several thousands of these boxes. Not surprisingly, most of these documents reflect the day-to-day world of agriculture and not business.

century.¹² Since the 1980s, the discovery of troves of local private transactional documents, largely land-related in what was until recently a predominantly agricultural country, has become a commonplace.

Given the survival of these tangible traces of economic life in the early and middle periods, it is remarkable how little evidence they provide for an understanding of investment in business. For the vast majority of businesspeople, who were most likely trading on their own account or that of their kinsmen, perhaps no such document was deemed necessary or survived the ravages of time. However, we do have anecdotal evidence that investment beyond the confines of the kinship setting did take place. Chinese scholars have long been particularly interested in traces of “early modernity” in Song period practices. Scattered references in memoirs, edicts, and other texts point to the frequent combination of capital in commercial ventures. For example, a decree from the first half of the twelfth century deals with groups of merchants found to be illegally trafficking in tea. Guidelines for punishment distinguished between those who simply traveled together and those who acted “in partnership and by combining their capital” (*jiehe huoban, liancai heben*).¹³ Shiba Yoshinobu cites a commemorative inscription describing the career of an eleventh-century man who in his earlier life joined with several persons from his home town to engage in trade along the east China coast in what Shiba calls a “partnership.”¹⁴ Bao Hui, a Southern Song political figure, is often cited for his description of *commenda*-like arrangements between small and middling coastal households and merchants engaged in maritime trade.¹⁵ Bao speaks of the locals with surplus cash “entrusting” (*jietuo*) their savings to maritime traders. And Hong Mai’s Southern Song collection of anecdotes, *Record of the Listener* (*Yijianzhi*) and similar collections purporting to provide the reader with short snippets of life experience contain references to people giving small amounts of money to merchants and to

12. Chuanxi Zhang, ed. *Zhongguo lidai qiyue huibian kaoshi* [Annotated *Compilation of Historic Chinese Contracts*] (Beijing: Beijing daxue chubanshe, 1995). The editor’s introduction provides an excellent synopsis of the content and provenance of early contract materials. Although many new discoveries have been made since the publication of this two volume collection, most recent finds date from no earlier than the sixteenth century.

13. *Song huiyao jigao* [Collected records of the Song dynasty], crime law part 2.107 cited in Xidong Jiang, “Songdai Guansi Shangye De Jingying Fangshi [Song Dynasty Official and Private Commercial Methods of Business Operations],” *Hubei daxue xuebao* 3 (1992): 156.

14. Yoshinobu Shiba, “Commerce and Society in Sung China,” trans. Mark Elvin, in *Michigan Abstracts of Chinese and Japanese Works on Chinese History* (Ann Arbor, MI: University of Michigan, Center for Chinese Studies, 1970), 27.

15. Jiang, “Song Dynasty Official and Private Commercial Methods of Business Operations,” 156.

groups of merchants embarking together on the dangerous business of long-distance trade.¹⁶

Whether these merchants simply traveled together for security and whether these funds were extended in the manner of loans or would pay off (or suffer losses) in proportion to the success of the venture is impossible to determine. However, two mathematical texts indicate that the notion of joint investment and sharing of profits did circulate among literate Chinese even though no contracts memorializing such arrangements have survived prior to the sixteenth century. Most famous is Zhang Qiujian's fifth-century *Classic of Calculation*, which presents a simple problem involving five players. "Jia has 30 cash, Yi has 50 cash, Bing has 40 cash, Ding has 30 cash and Wu has 60 cash. If these five people combine their capital to do business (*heben zhisheng*), and made a profit (*deli*) of 25,635, if they wanted to divide the profit according to the amount each put in, how much did each one receive."¹⁷

Zhang and his later editors were only concerned with the techniques by which the student calculated each participant's share in the profits, and there is no indication of ongoing transactions among these fictional businessmen. There is also no mention of the nature of their endeavor or the notion that each investor received a "share." Nevertheless, the basic principle by which parties might contribute varying amounts of money to an endeavor in return for a proportional share of the profits seems clearly in the air in the early dynastic period.

Shiba records a more elaborate example from Qin Jiushao's thirteenth-century *Mathematical Treatise in Nine Sections* (*Shufa jiuzhang*). It is worth reproducing this exercise in full for the several aspects of a possible business reality it illustrates.¹⁸

16. *Ibid.*, 159. Examples from later periods are far more commonplace. For example, the *Qingbai leichao*, a collection of snippets from Qing and early Republican period miscellaneous writings, refers to merchants from a common native place traveling together to engage in long distance trade. Cited in Zhongmin Zhang, *Jiannan De Bianqian, Jindai Zhongguo Gongsi Zhidu Yanjiu* [Difficult Transformations, a Study of Modern China's Company System] (Shanghai: Shanghai Academy of Social Sciences Press, 2001), 4. Long-distance merchants were often referred to as guest merchants and these groups were described as guest groups (*kebang*). The term for merchant groups (*bang*) was often used to refer to more lasting associations of merchants from a common native place, but without indicating whether or not they participated in joint investment. See, for example, Pengsheng Qiu, *Dang falü yu shangjiji: MingQing Zhongguo de shangye falü* [When Law Met the Commercial Economy, Mingqing Chinese Commercial Law] (Taipei: Wunan tushu chuban gongsi, 2008). Qiu suggests that the reason some shippers formed *bang* was to cushion the impact of government exactions and corvée levies.

17. Qiujian Zhang, *Suanjing* [Classic of Calculation] (Beijing: Erudition Digital Technology Research Center, 2009 [original c. fifth century]) <http://www.columbia.edu/cgi-bin/cul/resolve?clio10436923> (accessed March 20, 2015).

18. Shiba, *Commerce and Society*, 32–33. The translation is that of Mark Elvin with small changes by the author.

Problem: Assume that there is a sea-going junk that has been to the customs station and cleared of its obligations. Apart from the goods to be paid to the owner of the ship, there remain 5,088 ounces of heart of Cambodian lign-aloës, 10,430 packets of 40 catties each of black pepper, and 212 pairs of elephant tusks. These have been brought by A, B, C, and D as the result of their trading with joint capital (*heben*). A announces to the government that A's capital consisted of 200 ounces of gold, 4 bales of salt, 10 *tao* of paper money; B's capital consisted of 800 ounces of silver, 3 bales of salt, and 88 *tao* of paper money; C's capital was 1,670 ounces of silver and 12 *tao* of ordination certificates; and D's capital was 52 *tao* of ordination certificates and 58 ounces 8 *shu* of gold. The total value of the foregoing is estimated to be 424,000 strings of cash. A has borrowed B's paper money, B has borrowed C's silver, C has borrowed D's ordination certificates and D has borrowed A's gold. The goods so borrowed are now all returned to their original owners and establish the ratio for an equitable distribution of the commodities first mentioned. It is desired to know the original value of the gold, silver, bales of salt and ordination certificates and how much aloë, pepper and ivory each man should have received.

In addition to reminding us that Chinese merchants were already going far afield in search of exotic products, Qin's exercise assumes a government seeking revenue from Chinese junks venturing to Southeast Asia. More important, the merchants concerned are combining their capital and not simply traveling together. They are also engaging in complex credit arrangements, and like their counterparts in the previous example, they are dividing after-tax profits in proportion to their original investments.

Joint property was built into the fabric of Chinese social life. The smallest unit of ownership of land and other forms of wealth was not the individual but the household. Succession to this common property took place by means of household division (*fenjia*), which by law and custom gave equal shares to all biological male offspring of the household head.¹⁹ By the Song dynasty, wealthier households began to create endowments to support the ritual functions associated with honoring ancestors within the male line. Both to create a structure within which this higher level joint property could be managed, and to protect it from household division, by the late imperial period, some kinship groups also began to "incorporate" these properties within trusts (often called *tang*). However, household and *tang* assets were organic constructs. A male member of a kinship line did not need to

19. For a more detailed examination of the process and implications of household division, see David Wakefield, *Fenjia, Household Division and Inheritance in Qing and Republican China* (Honolulu: University of Hawaii Press, 1998). The distribution to adopted sons and sons of concubines changed in different periods, as did portions for unmarried daughters. Somewhat increased portions to cover the ritual responsibilities of eldest sons were also common.

do anything to partake of these assets. And any additions to the property of a household or a higher-level kinship association accrued to all members, whatever their participation in their accumulation. Assets might be enumerated in a written household division document. Lineage genealogies and other lineage record books maintained accounts of accumulated assets and their alienation. Households and higher-level kinship associations kept collections of land deeds, tenancy contracts, and other documents associated with management of common property. However, it was not until the late Ming dynasty (1368–1644) that we begin to see contracts memorializing the creation of long-term, jointly owned and managed property in support of purposes other than the ritual functions of the ancestral line, or that brought together investors whose association did not arise primarily out of kinship.

Several examples can help us see the impact that the contract culture described had on the combination of assets and distribution of rights and obligations. That some of these examples established relationships among kin points to the importance of contracts as a mechanism for the creation of new kinds of shared rights and obligations even for those for whom association was natural. Drawn up in 1568 in Qimen county, Anhui, one such document states that its signators are engaged in “joint management of timber resource.” Although the surviving document is in the form of an oath signed by three branches of the Li lineage, pledging not to cut down trees and steal timber for personal use and establishing fines to be imposed on those who do, the forested mountain is clearly thought of as more than a simple lineage endowment. The warning is addressed to “households with shares and households that do not have shares” (*youfen wufen zhijia*) and the mountain itself is referred to as a “jointly held mountain” using for jointly held the term commonly used for partnership (*huo*).²⁰ A 1432 contract from Xiuning county, Anhui, is even more explicit in its description of a partnership in mountain resources. In this case, three men with different surnames established joint ownership in a mountain, allocating six shares to Xie Dexiang, and one share each to Wu Yanduan and to Li Zhongjie and his unnamed brother.²¹ A mid-nineteenth-century contract in the Tian Tao collection attests to the continued importance of shareholding arrangements in forestry. In this case, four branches of the Fang family have established a tree plantation by combining a number of land purchases. Each branch put up an equal amount of money and received one share in the plantation, which was devoted to raising pine, fir, and other varieties of trees.²²

20. Zhang, *Annotated Compilation*, 1078–79.

21. *Ibid.*, 1089–90.

22. Daoguang 9 (1829) “An agreement signed by Fang Guhuai, et al regarding the joint management of lineage property” [Xiuning County, Anui]. Although structured as a

The commodification of agricultural goods clearly played a role in both entrepreneurial efforts to exploit agricultural and forestry resources, and the two cases mentioned must on their face be viewed both as conservationist and as efforts to direct the income from these resources to one group of claimants over potential competitors. We see similar examples in regions where tea and sugar were becoming important commercial products. Myron Cohen describes an innovative family division in Minong County, Taiwan, whereby instead of distribution of patrilineal resources and the establishment of new household properties by each of three brothers of the Liu family, the property accumulated by their father was kept intact and each brother was assigned a number of shares in a jointly owned sugar plantation farmed by a tenant. The brothers then received a portion of the rent according to their shares.²³ Mark Allee points to similar partnerships among entrepreneurial tea producers in late Qing Taiwan. In one case, land was first purchased from the original indigenous landowners, and then a partnership consisting of six shares was created, in which Allee estimates that approximately half of the shares were sold to non-kin.²⁴

One of the most unexpected of the early examples of shareholding in property are contracts referencing shareholding among tenants (*huodian*). To date no contracts drafted by the tenants themselves have surfaced. However, the practice of holding tenancy jointly is referred to in several contracts selling lands on which such tenants labored. Li Li points to three related contracts from Xiuning county, Anhui.²⁵ The first is a simple contract dated 1651, in which a man named Wang Guozhen sells agricultural land that he has both inherited and purchased. The contract indicates that there are four tenants on the land. Because their surnames are not given and three of them share a common character with Wang in their given names, these four tenants are likely male kin in the same generational line as the seller.

shareholding venture, the lineage character of this arrangement is clear in the prohibition on sale of shares to outsiders, a stipulation not found in most Qing period partnership arrangements. A similar document in the collection deals with the exploitation of forest land for firewood and also resulted in the division of a jointly held mountain into shares. Wang Hongqing et al., *Ming Wanli 34 (1606) Contract (She county, Anhui)*.

23. Zelin, Ocko, and Gardella, *Contract and Property*, 82.

24. *Ibid.*, 162–63. Allee notes that our knowledge of this transaction arose from a suit levied by nearby residents who claimed to have purchased the previously undeveloped land from the same aborigines a century before.

25. Li Li, “Qingdai minjian qiyuezhong guanyu ‘huo’ de guannian he xiguan [Qing Partnership Concepts and Customs as Seen in Popular Contracts of the Qing Period],” *Faxue jia* 6 (2003): 40. For the originals see Zhang, *Annotated Compilation*, 1136, 1143, 1147–48. A fourth such contract appears on 1129.

What sets this document apart is its implication that each tenant possessed a certain number of *gong* in the tenancy. The term *gong*, meaning labor, is rarely found in this context. Fortunately, two other contracts survive that help us clarify that the relationship being summarized in the term *gong* was a share, perhaps initially arising out of one's labor or right to labor on a portion of the land in question; in other words, a use right. A contract dated 1653 indicates that a certain Wang Junshan, needing money, was selling his *gong* in a particular tenancy to his cousin. As further evidence, a contract in 1655 records a sale by two brothers. The object of the sale was a total of 11 *gong* in three separate joint tenancies to which they succeeded from their father. As in the 1653 contract, the owners of the land are also named, further confirming that what was being sold was a right to jointly farm the land. Although we do not know the terms of the tenancies themselves, or if the owner of the share in the joint tenancy would himself farm, the *gong* were clearly understood to be a form of property that could be bought and sold. In each case, the contracts indicate that once the sale price for the *gong* was received in full, "the property [that is the *gong*] would be the buyer's to control at will (*qiye tingcong mairen guanye*)."

The commodification of tenancy rights appears to have become commonplace during the last dynasty, so much so that by the eighteenth century it had spread to the most remote areas of largely indigenous habitation. For example, Meng Zhang has found extensive evidence that within the Hunan–Guizhou border region, indigenous people who tenanted new plantations of commercial timber received shares in the income from the sale of slow-growing trees, thereby creating credit through deferred wages and liquidity in the form of shares that themselves could be bought and sold.²⁶

What interests us in the abovementioned cases is not the accumulation of landed property for the purpose of producing income, but rather the more abstract relationship to the land that shareholding permitted. A similar process by which donors came to see themselves as shareholders in corporate estates established to support temples, deity associations, and other religious and charitable functions among non-kin also seems to have been taking place at this time. The same compilation of documents cited previously contains a group of mid-nineteenth-century contracts recording the sale of shares in corporate deity associations in Shanyin County, Shanxi.²⁷

26. Meng Zhang, "Financing Plantation Forestry in Southwest China: Securitization of Timberlands and Shareholding Practices, 1700–1900," paper presented at the Association for Asian Studies Workshop on *New Frontiers in Asian Economic History* (East Lansing, MI, May 11–15, 2017).

27. Zhang, *Annotated Compilation*, 1332, 1342, 1352–54, 1358, 1360, 1374. Lest we wonder whether these are simply a variation of lineage estates, it is worth noting that contract

Although we do not have the founding documents of the deity associations, we can infer that in return for donations of land or other assets, donors in the past had received shares in the association commensurate with their largesse. Most of the contracts that have survived memorialize the sale of such shares by entities that had either inherited them or purchased them from other shareholders. These shares were treated in the same way that sales of land were treated. Indeed, some are designated as irrevocable sales whereas others indicate the conditions under which the shares could be redeemed at a later date by the original owner.²⁸ Several of the contracts indicate the acreage and location of the land belonging to the association and the expected rents that they will generate. These rents would be applied to what appear to be banquets honoring the deity and in some cases, the items to be prepared for the event are delineated as well. It is likely that the shareholders partook of these items once the ritual celebrations were over, as was the case in lineage rituals honoring ancestors. However, several of the contracts directly stipulate that if there was a surplus after the ritual functions of the association were performed, the remaining income from rents would be distributed among the shareholders.

From the foregoing, we can see that shareholding was becoming a common practice, the terms of which in at least some cases, were established by means of written agreements. Shares, as rights that were established in some form of physical asset, could be bought and sold, although the restrictions on who could buy shares and whether or not kinship or other qualifications could restrict the pool of buyers and secondary purchasers, were not always made clear. None of the examples given so far referred specifically to business or the mechanism for the distribution of income and losses. However, by the end of the Ming dynasty, merchant manuals and guidebooks present evidence that shareholding partnerships were becoming a standard form of business finance.

1101 (at 1142) memorializes the sale by Jiang Tianqiu of shares in a God of the Land and Grain association (*tugu shenhui*) to buyers named Wang.

28. The meaning of conditional sale (*dian*) has been highly contested in the literature on Chinese property rights. For a description of its legal formulation in the Qing period, see Jing, "Legislation Related to the Civil Economy of the Qing Dynasty," 67–71. A recent study by Taisu Zhang focuses on *dian* as a challenge to stable property rights in early modern China. Taisu Zhang, *The Laws and Economics of Confucianism: Kinship and Property in Pre-Industrial China and England* (Cambridge Studies in Economics, Choice, and Society) (Cambridge: Cambridge University Press, 2017).

Xie Guozhen, in his three volume collection of economic and social documents from the Ming period, includes one model contract that was clearly meant to be used as a guide for establishing a business partnership.

The drafters of this contract (*heyue*) [space for names] humbly find that wealth comes from working in partnership (*cai congban sheng*). With effort one can accomplish anything (*shi zai renwei*). Thus, we have discussed this together and decided to put our capital together to make a profit. Inviting a middleman we have each put up a certain amount of silver and will work in a spirit of cooperation to do everything possible to do business. Every year we will calculate the profits we have made face to face, measuring out a portion for our family use and putting capital aside for that which we could not anticipate. As for one's personal expenses, each must provide for himself. He may not spend the firm's money and cause confusion in the accounts. We therefore especially smear our lips with blood and establish this covenant, hardship and happiness must be shared, we must not secretly harbor selfish motives and enrich ourselves. If we violate this pledge, [may] the gods put us all to death. Now, so that there will be evidence, we are making two copies of this contract, which will be preserved to refer to in the future.²⁹

Although this model contract does not make mention of shares, it contains many of the elements that would be included in later business contracts as well as a few surprises. Unlike modern business agreements, the partnership contracts of the late imperial period were short, but often incorporated both narrative and moral content. This contract, being generic in purpose, lacked the story that often frames the formation of partnerships or the sale of shares. However, its exuberant reference to the pursuit of wealth, the efficacy of working in partnership, and the rewards of hard work poses a striking contrast to the late nineteenth-century depiction of Chinese merchants as selfish, individualistic, and even corrupt, and the assumptions made by many intellectuals seeking the source of China's weakness that Confucianism shaped merchant practices and limited the value placed on profit. Indeed, even the moral exhortations meant to strengthen the binding nature of this contract make reference to working for the common good and ancient traditions of blood covenant and the wrath of the gods, rather than rarified Neo-Confucian virtues.

Among the merchant communities that contributed most to the organizational repertoire of jointly invested Chinese business were the merchants based in Shanxi Province. Pioneers in long-distance trade, particularly in

29. Guozhen Xie, *Mingdai shehui jingji shiliao xuanbian* [*Selected Materials on Ming Period Social and Economic History*], vol. 3 (Fuzhou: Fujian renmin chubanshe, 2004), 275.

the frontier regions of Western China, they were early participants in the trade that provisioned Ming military colonies. A memorial from Yansui Town in today's Inner Mongolia notes that Shanxi merchants would arrive with large amounts of money. Entering into contracts with individual local merchants, they would jointly engage in trade, but the nature of the participation in profits and losses, at least as described here, remains unclear.³⁰ In his short essay, *A Record of Shanxi*, Shen Sixiao (1542–1611) adds to the evidence of large merchant fortunes among Shanxi merchants and a growing mythology that attributed their business success to moral character.

The grand merchants of Pingyang, Ze and Lu counties are the greatest in the world. If they do not have several hundred thousand they are not considered wealthy... When they engage in trade in partnership (*hehuo ershang*), it is called *huoji*. One person puts up capital and the partners collectively trade with it. Although they do not swear an oath, no one steals the capital for his personal benefit. One's grandfather might borrow money at interest and then die on the road. The lender might have given up on the money for decades. But if the sons and grandsons [of the borrower] learn of [the debt] they will exert all of their efforts to pay it back.³¹ Therefore, those with large accumulated wealth compete to go into partnership with these men.

Absent more detailed evidence, we might assume that in the Ming dynasty, even among Shanxi merchants, relationships among merchants engaged in trade, even long-distance trade, were not all that different from those found among European traders. Persons with money turned over their cash to trusted merchants with a reputation for business acumen. Sometimes, as in the memorial on Mongolian trade, we see references to taking a certain share of the profits from such arrangements. At other times, as in *A Record of Shanxi*, hints remain that the funds commended to merchants were understood to be loans that would bear interest, even if the borrower died on the road. Perhaps it is a lack of surviving evidence that creates a

30. Zhang, *Difficult Transformations*, 10.

31. Although this statement contains echoes of the kind of reputation capital we see within close-knit merchant communities such as the early modern Maghribi and Genoese traders and modern-day diamond merchants in New York, it must be understood within the context of the Chinese joint household property regime in which the debts of the father were legally passed on to the son. See Lisa Bernstein, "Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," *The Journal of Legal Studies* 21 (1992): 115–57; and Avner Greif, "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition," *The American Economic Review* 83 (1993): 525–48. For a discussion of the Chinese judicial enforcement of joint familial responsibility for debt, see Michael Ng, "Dirt of Whitewashing: Re-Conceptualising Debtors' Obligations in Chinese Business by Transplanting Bankruptcy Law to Early British Hong Kong (1860s–1880s)," *Business History* 57 (2015): 1219–47.

picture of socially embedded share-based partnership running ahead of the practices of merchants. However, by the sixteenth century, examples of shareholding in business and the treatment of shares as abstract claims to profits and obligations in the event of loss become plentiful. The expansion of commercial networks that helps account for this phenomenon has been well documented by both Chinese and Western scholars. Richard Lufrano and Timothy Brook in particular, have demonstrated the increasing demand for information on markets, trade routes, and the means to fund business ventures by the sixteenth century.³² We begin to see as well the use of contracts to structure investment and the division and exchange of assets with an eye toward the long term and not simply the life of a trading mission.

Partnership in the Qing Period

Not surprisingly, most partnerships were simple arrangements involving relatively small investments and no more than a handful of investors. Traces of these business relationships emerge in letters home,³³ the local customs sections of county gazetteers,³⁴ and court cases.³⁵ They appear

32. Timothy Brook, "The Merchant Network in 16th Century China: A Discussion and Translation of Zhang Han's 'On Merchants,'" *Journal of the Economic and Social History of the Orient* 24 (1981): 165–214; Timothy Brook, *Geographical Sources of Ming-Qing History (Michigan Monographs in Chinese Studies)* (Ann Arbor, MI: Center for Chinese Studies, University of Michigan, 1988); and Richard John Lufrano, *Honorable Merchants: Commerce and Self-Cultivation in Late Imperial China, a Study of the East Asian Institute* (Honolulu: University of Hawai'i Press, 1997).

33. For example, an 1835 letter from a Foshan man informed his family of a reallocation of shares in a multi-surname partnership. His family would now take three of the eleven shares, the Liao family would take an additional two shares for a total of seven, and a new partner, the Lüs, would take one share. *MingQing Foshan beike jingji ziliao [Economic Material from Ming and Qing Dynasty Foshan Inscriptions]*, 369, cited in Zhengming Zhang, "Qingdai shangye ziben de gufenzhi [The Shareholding System of Qing Dynasty Merchant Capital]," *Shanxi daxue shifanxueyuan xuebao* 2 (1989): 41. Zhijian Qiao, "The Rise of Shanxi Merchants: Empire, Institutions, and Social Change in Qing China, 1688–1850" (PhD diss., Stanford University, 2017), provides the most detailed discussion to date of the development of Shanxi merchant partnership in the context of the Mongolian border trade.

34. The author of an eighteenth-century Ba county gazetteer was particularly exercised by the impact of local farmers following the example of extraprovincial merchants in this Western commercial hub, selling their land in exchange for capital to go into business. Erjian Wang and Kaifeng Zhou, *Baxian zhi* [Gazetteer of Ba county] ([Ba Xian: s.n.], 1761). *juan* 10, *xiguan* [customs], *shang* [merchants].

35. For example, because he brought a case against his assistant for embezzlement, we know that Shi Hengshun put together capital from an unknown number of investors, went

to us in highly attenuated records and then disappear. In a few cases, such as those of the Zigong salt manufacturers and the Shanxi merchant/remittance bankers, we have data that allow a more in-depth examination of the evolution of shareholding practices. Before turning to them, however, it is useful to examine the kinds of evidence that emerge in the scattered, random contracts that have survived purely by chance, and not because they were collected by salt administration bureaucrats or highly articulated networks of long distance traders. In particular, I am interested in the language of their agreements as indicators of the role they saw their contracts playing in a system of private ordering, and the kinds of normative and structural information that they reveal about partnership in the late imperial period.

By the eighteenth century, contracts memorialized the establishment of a partnership, the sale or transfer of shares, or the dissolution of a partnership, and were explicitly drawn up as actionable proof of the intent of investors. They followed a similar pattern, indicating the purpose of the agreement, the amount invested by each party, the number of shares to be received by each, a formula for the division of profits and losses, a stipulation regarding reviews of the accounts (usually at the end of the year or once every 3 years), and an indication that copies of a written contract had been drawn up in the event that they were needed in the future as proof. Nevertheless, individual contracts could include interesting variations that point to the culture within which these agreements were embedded.

Among the most florid contracts I have encountered was an 1864 partnership agreement in which five shops in the port of Xiamen were merged under unified management to deal in foreign goods purchased in Hong Kong.³⁶ Although it was by no means typical, I begin with this contract because of the colorful language used in its tribute to the benefits of combining capital in the interest of making a profit. Following a straightforward listing of the shops and their locations, the drafters note that “you need a lot of foxes to make a fur coat,” a familiar metaphor for the need to bring together capital for a business endeavor. In case this is not clear, they more directly state that to make big profits you need a lot of capital. This sentiment is elaborated several lines later, likening the five shops to bogs that flow into each other. Speaking with one voice, their financial resources are deep, because they will now work together according to the same principle. It is not until halfway through the agreement that the

to Sichuan, and opened shops selling raw cotton from his native Shaanxi province. *Baxian Archives*, 6.4.5876 HF 5.

36. Manuscript copy reprinted in Guozhen Yang, “MingQing yilai shangren ‘heben’ jingying de qiye xingshi [Contractual Forms of merchant Co-investmient in the Ming and Qing Periods],” *Zhongguo shehui jingjishi yanjiu* 3 (1987): 4.

practical dynamics of the new partnership are laid out. The partnership will issue thirty shares to the five shops according to the capital they contribute, as well as three shares to the manager and two staff. They will settle accounts once a year, dividing profits minus operating costs, according to shares. Should a partner wish to withdraw his capital, he must first call a meeting of the partners and not act on his own. Finally, the drafters note that they have come together in a spirit of friendship and trust and established [their partnership] in a spirit of selflessness, desiring to make an agreement that will last like an oath in stone or metal.

Far more descriptive of normative goals than most Qing contracts, the sentiments embodied in this Xiamen contract can be nevertheless be found in many business agreements. The emphasis placed on combining the capital of many as the means to great wealth does not surprise us, although it would have surprised early twentieth-century critics of Chinese merchant culture who would later use those same fur coats and their many constituent pelts to chastise Chinese merchants for not investing in joint stock companies.³⁷ More significant is the language that closes the agreement. In the legal vacuum that was left by the *laissez-faire* policies of the late imperial period, merchants sought to create credible commitments through their partnership agreements. Contracts pledged shareholders to mutual trust and selflessness in the pursuit of common goals. Rather than referencing the individual Confucian virtues of righteousness, shame, and loyalty, they focused on the one arena of equality within the highly hierarchical Confucian understanding of human relationships, that of friendship. The repetition of the values of working together in a spirit of selflessness committed shareholders to putting the interests of the partnership ahead of their own. An oath like those in stone and metal clearly pointed to the hope that the partnership would endure, but also referenced earlier traditions of memorializing trust commitments in stone.³⁸

At the same time that it was directed at its own members, the contract was also addressed to a legal regime in which the state was uninterested in legislating rules for business transactions but recognized a contract entered into freely as representing a legal commitment actionable in a magistrate's court. We can see this in what became standard closings in partnership contracts. One of the earliest business communities for which we

37. For example, in a 1904 commentary in *Shangwu Bao* (*Business*), the year the first Chinese company law was promulgated, an author decried Chinese merchant individualism, proclaiming "A thousand dollar fur cannot be made from the pelt of a single fox, a building of 10,000 rooms cannot be built with a single timber." "Promoting Business is the Way to Strengthen the Country," *Shangwubao*, 1904, 8, 11–17.

38. The use of stele to memorialize trust commitments is elaborated by Weiwei Luo in her Columbia University History PhD dissertation defended in August 2018.

have partnership agreements, the coal mine developers of Mentou gou outside Beijing, produced agreements that were strictly about the business. This 1655 contract is typical.³⁹

Wang Conglian, et al are writing this contract because in previous years we opened the Daxing pit at Jingming si. Now as we again are going to operate the pit, we are short of capital. We have come to an agreement with the middleman Zhang Yingji to contact the Sun and Ma families to put up money and enter into partnership. The pit will be divided into 45 shares. The landowner [names unclear] will receive 5 shares. The Zhang and the Wang families will receive 24 shares. The Sun and Ma families will receive 16 shares. When the pit produces coal, we will first deduct and pay the new costs of production (*gongben*) and deduct the Wang's old costs of production in the amount of 10,300 cash. Once [production costs are] deducted and paid, if there are profits they will be divided equally. Everyone [enters into this agreement] willingly (*zhongjia qingyuan*) and really has no regrets. Fearing that in the future there will be no proof, we are writing this partnership contract making two copies to keep as evidence.⁴⁰

This language would become a standard element of business partnership contracts. As I will explain, middlemen appear as notaries, but also often as active participants, bringing together investors and receiving shares for their efforts. Contributors of land, equipment, and managerial skills also often appear as recipients of shares. And affirmations that agreements were entered into without coercion or reservation established the necessary conditions by which such contracts, in their multiple copies, functioned as evidence in the event that a dispute brought the signators to the magistrate's court.⁴¹

The shortage of capital that triggered the agreement entered into by these Mentou gou mine developers was also a commonplace in the late imperial period. Their solution, to bring in additional shareholders, reflects the tight credit market in late imperial China. Interest rates were high⁴² and loans

39. Zhiping Chen and Zengrong Lu, "Cong Qiyue Wenshu Kan Qingdai Gonshangye Hegu Weituo Jingying Fangshi De Zhuanbian [Using Contractual Documents to Examine the Transformation of the Industrial and Commercial Joint-Stock Proxy Management Form in the Qing Period]," *Zhongguo shehui jingjishi yanjiu* 2 (2000): 29–30.

40. Signators to the agreement include the original developers of the mine, Wang Conglian and the Zhang family, those who were now putting up capital, Ma Chaolong and Sun Guodong, the owners of the land on which the mine was excavated, and two middlemen, Zhang Yingli and Yang Xi.

41. These final affirmations build on similar language in contacts for lease or sale of land.

42. The Qing Code (Article 149) prohibited interest rates exceeding 3% per month, suggesting that actual rates were even higher. Jean-Laurent Rosenthal and Roy Bin Wong argue that Chinese interest rates were not dramatically higher than those of European capital markets, but they rely on a single source that assumes lower rates than do most Chinese

from so-called native banks were available only for short-term bridging capital. Long-term capital was sometimes raised from among shareholders themselves. Zhongmin Zhang notes the mention of *fuben* in some partnership contracts. This term seems to refer to cash deposited with the firm by shareholders in anticipation of interest or dividends, but which was not counted as investment capital in the distribution of net profits according to shares. In such cases, the firm did not create new equity, but rather increased its working capital from among its own shareholders.⁴³ Small partnerships, such as those formed to mill sugar in nineteenth-century Taiwan, appear to have anticipated annual infusions of working capital from shareholders who expected their advances to be more than offset by profits at the end of the milling season.⁴⁴ In extremis, many surviving partnership contracts refer to infusing firms with new capital by expanding the number of shares.

In 1873, after years in business, the partners in a Shanxi firm experienced persistent difficulties. In the narrative style common to business contracts, the original partners describe their determination to renew the business with added vigor. They state that some partners would leave and new ones would invest, and that others would increase or decrease their equity stake. The firm would continue under its former name but at a new location, and would engage in the sale of dyed silks and miscellaneous goods. Seventeen shares would be issued, priced at 2000 taels each, for a total capitalization of 34,000 taels. The transfer of funds and shares would be recorded in a separate ledger.⁴⁵ Profits would be distributed according to shares. Although there is no indication that a set of internal regulations was written at this time, this contract, like others, established a moral framework for protecting the integrity of the partnership similar to that discussed. They would work with a common purpose (*tongxin xiel*), indicating that if anyone acted in a manner that was

commentators on interest rates. Jean-Laurent Rosenthal and Roy Bin Wong, *Before and Beyond Divergence: The Politics of Economic Change in China and Europe* (Cambridge, MA: Harvard University Press, 2011), 134–40.

43. Zhang, *Difficult Transformations*, 29.

44. Christopher M. Isett, “Sugar Manufacture and the Agrarian Economy of Nineteenth-Century Taiwan,” *Modern China* 21 (1995): 244.

45. By the nineteenth century, the detailed rights and obligations of partners were often recorded in ledgers or in separate regulations (*zhangcheng*). *Zhangzheng* easily morphed into “articles of association” in share offerings in the late nineteenth and early twentieth centuries, even when firms did not formally take advantage of new laws that permitted registration as a joint-stock company. Li, “Qing Partnership Concepts,” 42. Li cites a report on business customs reprinted in the compilation *Minshi xiguan baogao lu* [*Report on a Survey of Popular Customs*], vol. 2, 681.

“unjust or unlawful (*bugong bufa*),” or if anyone actively sought to enrich himself [at the expense of the business] (*jiji feiji*), he would be ejected from the firm.⁴⁶

Among the surviving contracts documenting the restructuring of shares, the most elaborate are the *shangxia jie* contracts utilized by nineteenth-century Zigong salt manufacturers to infuse their well drilling enterprises with new capital when wells took an unexpectedly long time to reach peak productivity. New partners were brought in and new shares were issued in order to increase the total capital of the firm. And, as in the case of the Mentou gou mines, the financial contribution of original investors was acknowledged, in this case by allowing them to maintain a reduced equity stake in the expanded number of shares in the new partnership.⁴⁷ Such restructuring could take place multiple times at a single well, creating a complex tiered relationship among shareholders that was managed through successive reclassification of shares and successive *shangxia jie* contracts.⁴⁸

In 1878, Qu Fulu and Li Yingzhou wrote an agreement stating that they had purchased a fully equipped rice mill for 1,700 taels. Together the partners would hold 10 shares. Qu Fulu would get 6.5 for an investment 1105 taels. Li Yangzhou would get 3.5 for investment of 595 taels. After pledging to work in harmony once the agreement was concluded, Qu and Li added a twist to the normally straightforward division of profits based on relative investment. Two additional shares were established for a total of twelve. One was designated the property in perpetuity of the mill’s manager, Jiang Rongzhuang. The other was to be assigned to the God of Wealth, a rather recent object of merchant devotion and projection of mercantile aspirations and virtues.

The profits accruing to the God of Wealth were to be placed in the shop, suggesting that they did not serve a religious purpose, but rather were a form of retained earnings.⁴⁹ More common was the allocation of a share

46. Reprinted in Zhang, “The Shareholding System of Qing Dynasty Merchant Capital,” 41.

47. Madeleine Zelin, *The Merchants of Zigong: Industrial Entrepreneurship in Early Modern China* (New York: Columbia University Press, 2005), 42–48.

48. Shortages of working capital were also addressed in other ways. Robert Eng describes late nineteenth- and early twentieth-century silk manufacturers who formed partnerships to build filatures, and lacking working capital, leased them to partnerships that produced thread. Eng attributes this practice to weaknesses in capital markets, but acknowledges that particular characteristics of the silk market also contributed to partnerships treating filatures more as real estate than as integrated manufacturing firms. Robert Y. Eng, “Chinese Entrepreneurs, the Government, and the Foreign Sector: The Canton and Shanghai Silk-Reeling Enterprises, 1861–1932,” *Modern Asian Studies* 18 (1984): 360–61.

49. Li, “Qing Partnership Concepts,” 42. The traditional God of Wealth was a far from savory figure in the Chinese spirit pantheon. However, the growth of the merchant economy

to the manager of the mill. I have already described one example in the Xiamen contract. The invention of shares to reward the contributions of clerks and managers is attributed by Chinese scholars to the Shanxi merchants, whose innovations in long-distance trade and the establishment of China's first remittance banks made them among the wealthiest late imperial businessmen. Given their widespread distribution of branch firms, the use of shares to remunerate managers was clearly one means of overcoming principle-agent issues. As structured in Shanxi contracts, they provided incentives to managers and even clerks to work for the benefit of the firm and to remain loyal employees over the long term. According to the *Qingbai leichao*, "Those who put up capital are called silver shares (*yingu*). Those who put up labor are called body shares (*shengu*)." Silver shares were the investments that enabled a firm to open. Young men with a knowledge of writing and arithmetic were then hired and trained as clerks. Those who did well were designated as *shengu* and they ceased to be paid wages. After 3 years, when the accounts were settled, the *shengu* received a portion of the profits commensurate with their shares.⁵⁰ Randal Morck and Fan Yang have examined the workings of body shares in their study of the Rishengchang bank. Managers who held body shares received dividends, but unlike equity shareholders, they had no claim to the equity of the firm, nor could their shares be inherited. However, their kin did receive a death benefit of sorts, in the form of term-limited death shares (*gugu*).⁵¹

The presence of body shares in partnership contracts from many parts of China may be evidence of the spread of a Shanxi business model, or it may reflect the more pervasive practice of rewarding various kinds of investments with equity in a partnership. Rewarding staff with a share in profits

saw a new, unauthorized pantheon to which this god and the Zigong God of Fire, belonged. See Von Glahn, "The Enchantment of Wealth"; and Zelin, *The Merchants of Zigong*, 55.

50. Xu Ke, *Qingbai leichao*, v. 17, *nongsheng lei*, 70–71, cited in Jianhui Huang and Zhongguo renmin yinhang, *Shanxi piaohao shiliao* [*Materials on the Shanxi Remittance Banks*] (Taiyuan Shi: Shanxi jingji chubanshe, 2002), 582. Chinese scholars have noted that over time the number of body shares could exceed the number of investor or silver shares. However, there are no studies on the impact this may have had on the viability of the firm. The practice of issuing body shares continued into the mid-twentieth century, as noted in this account of Shanxi merchants in Manchuria written in the 1940s. Wu Xiyong, "Jindai dongbei yimin shilue (A Brief History of Migration to the Northeast in the Modern Period)," *Dongbei jikan* 38 (June 1941): 219–342.

51. Randall Morck and Fan Yang, "The Rise and Fall of the Rishengchang Bank Model: Limiting Shareholder Influence to Attract Capital," in *The Origins of Shareholder Advocacy*, ed. Jonathan G. S. Koppell (New York: Palgrave Macmillan, 2011), 195–98. Unfortunately, the one example they provide is from the 1940s, so we do not know whether the practice of issuing death shares was the result of foreign influences.

was also a way to overcome the working capital problem noted. Huang lineage documents in the Quanzhou museum in Fujian province include several contracts noting the allocation of shares to managers, in this case calling them *yingu*. Respondents to twentieth-century surveys of business customs in Hubei noted that firms considered both money and labor to be forms of capital to be counted in the calculation of shares and the distribution of dividends (*hongli*).⁵² It has already been stated that land could be the basis for shares in Mentou gou mines. In the hills outside Chongqing, Sichuan, similar arrangements were made. For example, Liu Derong, Liu Anquan, Liu Hongchuan, Xu Peihou, Wu Yisun, Wang Sanyi, and He Bingyi formed a partnership in the Ruifeng ironworks. Although they each received shares reflecting their investment, Liu Derong and Liu Anquan's investment consisted of the land on which the iron mine was located. These holders of what was termed *gan* shares appear to have had some of the characteristics of dormant partners, which may explain the fact that they were not held liable for losses but did receive a proportional share in profits.⁵³

At the Zigong salt yard, where factory style extraction and refining of brine into table salt developed on a large scale, the construction of partnerships among landowners, investors with capital, and middlemen with expertise in well development produced its own terminology but reflected a similar, if more systematic, distribution of rights and obligations. Although Chinese agriculture produced sophisticated mechanisms for the subdivision of rights in arable, ranging from simple leases to complex systems of multiple ownership and conditional sale, rising profits in salt production led increasing numbers of landowners to opt for equity shares rather than leasing out potential well sites. Shifts in the relative importance of land and capital were eventually reflected in the changing distribution, rights, and obligations of what were initially called landowner and investor shares. For example, at Ziliujing, where well drilling partnerships were by custom established with 30 shares, early investors of land received as many

52. Anonymous, "Hubei Zhi Zhaiquan Xiguan [Hubei Customs of Creditors' Right]," *Falü pinglun* 4 (1926): 19–20. In some parts of Hubei these shares were called *gangu* and did not get an equal share of the profits but did partake of some form of bonus distribution. "Hubeisheng zhi Shangshi Xiguan: hehuo yingye zhi hetong (Yichang xian xiguan) [Hubei Merchant Customs: Partnership Operations Agreements, Yichang County Customs]," *Falü pinglun Beijing* 5 (1927): 25.

53. Baxian Archives 6-6-38968, cited in Jing Xie, "Meiyou falü de zhixu: wanQing Baxian gongshangyeheshuo yanjiu [Order without Law: A Study of Late Qing Baxian Industry and Commercial Partnerships]" (Wuhan, China: Central Nationalities University, 2012), 17. See also Baxian Archives 6-6-38996. Xie located sixty-six legal cases involving partnership in Baxian, one of the counties comprising modern-day Chongqing. Several revealed investment of assets other than money, including equipment, shops, land, and labor.

as 7.5 shares, had no cash obligations during the drilling phase, and only participated in profit-sharing once the well was fully operational. Over time, new and costly technology and expertise contributed to a reduction of the landlord shares and greater participation of landlords in the cash infusions required to bring a well into production. Nonetheless, once a well began producing brine, all categories of shareholders, including the middlemen who brought investors together with landowners and supervised the drilling of the well, shared equally in profits and losses according to their shares.⁵⁴

One last issue is worth examining if we are to understand the appeal of shares to persons who in the West would be considered silent partners. By the Qing period, shares themselves had become flexible assets that could be sold and even leased. Nor did the death, withdrawal, or inability of a partner to continue to fulfill his financial obligations necessarily trigger dissolution of the partnership. The Baxian Archives contain a number of cases in which a shareholder withdrew and a new contract was drawn up such that his shares were absorbed by the remaining partners with no change to the business. For example, Zhang Delin, Hao Songting, and Wang Yuting were partners in the the Yongsengong, a workshop that appears to have manufactured barrels. When Zhang decided to leave the partnership, the partners jointly inspected the books and calculated the losses that should be borne by each partner, their debts, and how much of the joint assets of the partnership should be returned to Zhang. They then signed an agreement that stated that henceforth the partnership would belong to Hao and Wang and would have nothing to do with Zhang.⁵⁵

The case of the Mutaishangtang medicine shop provides an interesting place to examine both the potential longevity of partnerships and the liquidity of shares.⁵⁶ In the mid-eighteenth century, the ancestors of Ying Tongren were party to the founding of the Mutaishantang, a Suzhou firm that in one form or another has survived to the present day. In 1860, it was destroyed by “military disaster,” most likely connected

54. For a fuller discussion of the evolution of shareholding practices at Zigong see Zelin, *The Merchants of Zigong*, 24–49. These specialized middlemen were known as *chengshouren*.

55. Baxian Archives 6-6-27643-11 cited in Xie, “Order without Law,” 22. See also Baxian 6-7-2622-9 and 6-6-27908. Xie found only one partnership agreement that stipulated that a partner who withdrew could not recover his initial investment, Baxian Archives 6-6-38968.

56. Suzhou Chamber of Commerce Archives Z.14-002-0059-020. Suzhou Chamber of Commerce Archives Z.14-002-0085-054, in reference to a different case, provides clear evidence that at least by the end of the Qing period the original partnership contract and the share certificates issued by a firm provided the main evidence in such cases.

to the Taiping Rebellion. In 1864, when the rebellion ended, the original shareholders, themselves from Suzhou and Ningbo, major financial centers in Qing China, invited new investors from these cities to join them in reopening the shop, structuring ownership in twenty-four shares at 500 taels apiece. The Ying lineage, under the name of Ying Jiuru, received two shares. In 1891, the Yings underwent household division, and one share was transferred to each of two lineage branches. Soon afterwards, one of these branches, in the name of Ying Huanwen, sold its share to persons surnamed Chen, who subsequently resold this share to persons surnamed Zhang. Both of these sales were described in later court documents as irrevocable sales, distinguishing them from conditional or redeemable sales common in land transactions.

In 1911, Ying Huanwen died, and a member of his branch came to the shop claiming that at the time the shop was rebuilt and the 24 shares established, the Yings had actually received four shares and that Ying Huanwen had sold three of them without the authority of his fellow lineage branch household heads.⁵⁷ By 1911, the last year of the Manchu dynasty, much had changed in the world of Chinese business. By 1903 the Qing dynasty was engaged in the creation of a written commercial law, but its bearing on the emerging dispute among the Ying shareholders was small. Its most important impact was to designate the newly formed Chamber of Commerce as the first body to examine the evidence and offer advice to the courts in this dispute. It is the Chamber's records that give us a window into the case. The march of the Yings down to the Mutaishangtang had a simple purpose. They wished to recover unclaimed dividends from their alleged shares dating back to 1891, likely no small sum given the current success of the firm. The remaining shareholders challenged their claim by pointing to the record of shares held and shares sold, carefully maintained in ledgers at the shop. At the same time, we learn that each shareholder was issued a share certificate on which the number of shares held was clearly written. It was on the basis of these certificates that profits were distributed, and the heirs of Ying Huanwen had no such document to present as proof. In the end, the interlopers lost the case because the courts relied on the customs of the trade and evidence given by both a member of the medicinal herb guild and a representative of the shareholders in the Mutaishangtang itself, named Zhang.

We have abundant evidence of shares being bought and sold during the Qing period. The sale of deity association shares hint at the treatment of

57. Note that there is no implication that Ying Huanwen was required to consult the other shareholders in the firm. His only obligation was to his lineage branch, which owned the shares as joint property.

shares as abstract assets producing annual benefits. Shares in the rice mill established in 1878 by Qu Fulu and Li Yingzhou changed hands several times in the decade after they first started their venture.⁵⁸ Du Baotian, Yuan Tinglu, and Yuan Baozhai opened the Zhengxunxiang as a partnership that appears to have operated as a workshop producing writing paper. When Yuan Baozhai died, his four shares were sold to Zhang Xiangzhi's Tongtaihang, a medicinal herb shop that may have simply viewed the shares as an income-producing asset.⁵⁹

Whether or not such sales had to be approved by fellow shareholders is unclear. In the absence of a commercial law, it would have been left to the partnership agreement to include such requirements. Sherman Cochran notes that the Shenxin cotton mill required unanimous consent of the shareholders to sell shares in the mill, but stock in this firm was tightly controlled by its Rong family founders.⁶⁰ On the other hand, the founders of the Tongren tang, another famous purveyor of herbal medicine founded in 1669, saw their equity stake reduced to 20% of the firm's total shares after a fire in 1753 destroyed the shop. In 1818, they held only half a share and were one of twenty-one shareholders. It was only in the late 1880s that the family managed to buy back all the shares and restore the firm's status as a family-held company. Some contracts stipulated that shareholders be consulted before shares were sold, perhaps indicating a right of first refusal. Clauses stating that "a partner may not transfer his shares to someone else on his own" were common among Zigong well-drilling contracts.⁶¹ Nevertheless, Zigong shares changed hands frequently, new buyers often being brokered by the same middlemen responsible for bringing together the owners of well land and the initial investors.

Conclusion

This study illustrates the wide range of practices that shaped shareholding and partnership as they evolved in late imperial China. During the nineteenth century, as cognate practices in the West were being debated and

58. Li, *Qing Partnership Concepts*, 42–43.

59. Baxian Archives 6-6-27831, cited in Xie, "Order without Law," 21.

60. Sherman Cochran, *Encountering Chinese Networks: Western, Japanese, and Chinese Corporations in China, 1880–1937* (Berkeley, CA: University of California Press, 2000), 120–22.

61. See, for example, the 1834 Tianshun well drilling contract, Zigonggongshi dang'an guan, Beijing jingji xueyuan, and Sichuan daxue, *Zigong yanye qiyue dang'an xuanji* [*Selected Contracts and Documents from the Zigong Salt Industry*] (Beijing: Zhongguo shehui kexueyuan chubanshe, 1985), 336.

hardened into what emerged as the distinctive corporate theories governing business in the United States, Britain, and continental Europe, diplomats and businessmen and others displayed genuine curiosity about the foundations for business practice in China. As observed by one writer in the *China Mail*, “The inborn business capacities of the Chinese, and their marvelous cooperative instincts, led to the employment of such floating capital on the basis of partnership and joint stock associations at a time when our ancestors were still squatting in the bush.”⁶² Although we need not go as far as this commentator, this article does seek to provide the legal historian with evidence of an alternative route to a corporate theory rooted in a very different set of cultural and political possibilities and constraints.”

An examination of Chinese shareholding and partnership reminds us that the precursors of the corporate form developed organically in their cultural and political contexts. Family law in most traditions played a vital part in determining how property, including shares, came to be held and redistributed at death. In China, the joint household was among the few civil matters governed by formal state rules. The absence of a clear concept of individual property would be one of the most important points of divergence between Chinese and Westerners as they began to invest in each other’s firms in the nineteenth century. In China, the lineage trust, a private device to overcome state-sanctioned rules governing succession to property, was ultimately accepted by dynastic authorities and became the basis for practices that allowed the longevity of both charitable and profit-oriented entities. In China as well, the particularistic interests of guilds resisted state control into the twentieth century, ultimately becoming partners in a new system of litigation based on professionalized courts. Conformity of practice in China emerged as needed or as merchant groups with an increasingly national presence came to be recognized within the merchant community as having something we might call “best practices” worthy of emulation.

At the end of the day, the possibilities of an indigenous corporate theory in places like China were foreclosed by reforms driven by the demand to adapt to an emerging “international legal regime.” That some aspects of that regime better suited the demands of large-scale industrial enterprise surely proved to be the case. But the slow acceptance of such reforms, which took the product of Western experience to be the sole foundation for the regulation of business entities and their transactions, speaks to more than the obduracy of Chinese businessmen.

62. “Partnership in China,” *China Mail*, October 17, 1889, 8, citing an earlier report published in 1882.

Many factors influenced the difficult road to harmonization of law in the Chinese legal field, among them weak governments, only partial reform of China's traditional magistrates' courts, and a crisis of trust in a rapidly changing social and political world. But it was also the case that many of the rules embedded in the new Western transplants that contributed to a Chinese company law addressed problems that did not significantly constrain most Chinese merchants, who were already free to transfer and inherit shares and whose businesses could outlive them intact or survive the withdrawal of a partner. The potential of other aspects of the legal personhood of the corporation would not be fully realized as written in early Chinese company law, but would equally suffer from the persistence of joint household property as a factor in business disputes. At the same time, well-established practices governing liability for debt and the distribution of authority in the firm would continue to inhibit acceptance of new Western models for incorporation down to the communist takeover of power in 1949.⁶³ We do not know what form a codified Chinese company law might have taken had it emerged organically from the precedents created in indigenous merchant practice, as was the case in the West. It is likely that it would have found much in Western practice useful. It is also likely that it would have found a more responsive audience within China's business community than was granted the transplants imposed in a drive to satisfy the Western demand that China accommodate to "international" conventions that were themselves the product of a long evolution in local contexts.

63. See, for example, Kai Yiu Chan, "Making Sense of the 'Business Group' in Modern China: The Rong Brothers Businesses, 1901–37," *Australian Economic History Review* 51 (2011): 219–44; Elisabeth Köll, *From Cotton Mill to Business Empire: The Emergence of Regional Enterprises in Modern China (Harvard East Asian Monographs)* (Cambridge, MA: Harvard University Asia Center, 2003), 64–68, on the role of lineage trusts in the organization of Chinese conglomerates.