
2. Silk Road cities and their co-existing legal traditions

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I INTRODUCTION

At the height of the Silk Road trade, between 200 and 800 CE, merchants carried their goods from one oasis to another on the northern and southern routes around the Taklamakan Desert in the present-day Xinjiang region of northwestern China. Although these oases were much smaller than modern cities, with populations ranging from perhaps 1000 to 50,000 inhabitants, they resembled modern cities in that they had mixed populations of peoples who spoke mutually unintelligible languages and had divergent legal traditions. Each oasis had its own legal system. It seems most likely that the rulers borrowed laws from one of the land empires neighboring the Taklamakan Desert, whether India, Iran, or China – all societies with sophisticated literary traditions – and modified existing statutes to fit local circumstances.

Unlike the legal systems of modern nation states with their clear citizen/non-citizen distinctions, the historic Silk Road oasis city-states did not distinguish sharply between the subjects of different kingdoms. Today, whenever a citizen of one country enters another country, treaties between the two countries determine that person's legal status and grant whatever privileges accompany that status. The rulers of different Silk Road oases did not make such sharp distinctions, but they were aware that their subjects came from different localities and so were familiar with different legal norms.

Because the region's dry climate preserves documents written on wood, leather, and paper, an extraordinary amount of information survives that shows how these early legal systems actually functioned. This chapter will consider the two best-documented examples of Silk Road legal systems, one used in a small hamlet called Niya (also called Cadhota) in the independent Kroraina Kingdom between 200 and 400 CE, the other in a much larger oasis city called Turfan between 500 and 800, both at the time when it was part of the independent Kingdom of Gaochang and after 640 when it came under the rule of the Tang Dynasty of China. See Figure 2.1.

The oases of Niya and Turfan had no relation to each other. Niya was part of the Kroraina Kingdom, which collapsed around 400 CE; Turfan belonged first to the Gaochang Kingdom (500–640) and then came under the direct rule of the Tang Dynasty. Niya's residents had their own legal traditions, and they adopted multiple practices from northern India after a group of settlers from there arrived after 200. Before the Tang conquest of 640, when the Kingdom of Gaochang was independent, the residents of Turfan followed both Iranian and Chinese legal systems.

There was no single body of Silk Road law. Instead, the officials of each oasis implemented whatever local legal system was in place while doing their best to devise solutions that would work for litigants with disparate legal traditions. Although the indigenous peoples of Central Asia did not have their own writing systems, they observed certain legal norms that judges

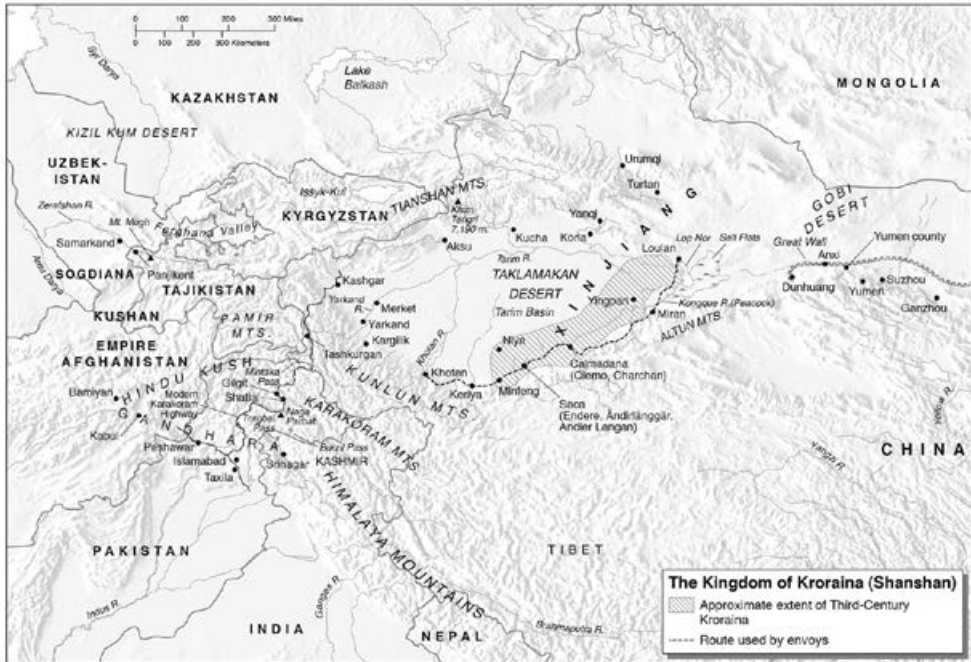


Figure 2.1 *The Kingdom of Kroraina (Shanshan)*

observed when resolving disputes. Much of the evidence that survives concerns contracts and disputes about them: those who drafted contracts worked with templates and regularly incorporated fixed phrases, presumably when parties to a contract added clauses with which they were familiar.

In the 640s, after the Tang-Dynasty forces took control of Turfan, the situation changed. The Chinese legal tradition, as spelled out in the Tang Code, was in effect. Because the code's drafters recognized that different groups of foreigners who lived in the Tang empire had their own legal traditions, they specifically instructed judges how to handle disputes among groups with varying legal traditions.

II LEGAL HEARINGS AND DOCUMENTS AT NIVA, CA. 250–350 CE

Located along an 800-kilometer stretch of the Southern Silk Road, the Kingdom of Kroraina extended from Niya in the south to the salt lake of Lop Nor in the kingdom's northeast corner. Chinese sources put the kingdom's population at 14,100 people living in 1570 households. Niya was very small, with around one hundred dwellings found so far by archeologists. These dwellings most likely housed a population of no more than several hundred people. The kingdom's original residents spoke a now-lost language that we do not know about because it was not written down.

Sometime around 200 CE, a group of migrants from northwestern India brought the written language of Gandhari, an Indian Prakrit descended from Sanskrit, with them; they also introduced a legal system from India to the inhabitants at the same time.¹ Surprisingly, the locals continued to rule the kingdom while the migrants took up a variety of different positions including – most important for this article – that of scribes recording legal disputes. In addition to the original residents and the migrants from Gandhara, other groups lived in the hamlet as well: Khotanese from the nearby oasis of Khotan to the west and a handful of Chinese.

We know about the legal system of the Kroraina Kingdom only because nearly 1000 documents written in the Gandhari language and dating to 250 to 350 CE were preserved in the sands of Niya by the region's dry climate. Excavated by Aurel Stein in the early twentieth century, these documents are written mostly on wooden tablets, but some are also on leather and paper. We can assume that similar documents and an identical legal system were in use in other places in the kingdom. As the king resolved disputes and sent orders to the *cozbo* officials in Niya, he must have sent similar orders to other localities (but these do not survive). The materials from Niya have been translated into English by T. Burrow.² Some of the excavated documents shed light on legal practice, primarily orders from the king to the local officials instructing them to implement legal decisions reached in the capital and agreements recording the circumstances when something, such as land, or someone, like a slave, was bought or sold.

The very first document in the series, #1 in Burrow's numbering, is a typical order from the king to a local official bearing the title of *cozbo* (who functioned as a governor or prefect) and named Tamjaka about a dispute brought by a man called Lyipeya. In its entirety, the document reads:

To be given to the *cozbo* Tamjaka.

His majesty the king writes, he instructs the *cozbo* Tamjaka as follows: Lyipeya makes a complaint that soldiers of Saca carried off two cows of his. One cow they sent back, one they ate. This dispute must be carefully investigated by you [Tamjaka] in person and a decision must be made according to law; if you are not clear about it there [in the village of Niya], they [the soldiers] must be sent here [to the capital] in custody.³

This text is typical of the Niya documents. They concern intensely local disputes, and often the complainants have gone to the king directly to obtain justice (scholars are not sure where the capital of the kingdom was located; it may have been in Loulan, or the king may have heard disputes wherever he happened to be traveling). The king instructs the *cozbo* official to implement a decision 'according to law' without specifying which law he means; most likely they are enforcing a local variety of Indian law, perhaps something like the rules written down in the *Arthashastra*, a prescriptive legal text from the second to fourth centuries CE that recorded the bureaucratic practices of the Mauryan dynasty (ca. 320–185 BCE). The *Arthashastra*

¹ Valerie Hansen, *The Silk Road: A New History with Documents* (Oxford University Press 2017); the Kingdom of Kroraina is the subject of Chapter 1, pp. 25–55. Interested readers should consult the extensive notes, which provide many more citations than those included in this chapter.

² Thomas Burrow, *A Translation of the Kharoṣṭhi Documents from Chinese Turkestan* (Royal Asiatic Society 1940) at <https://depts.washington.edu/silkroad/texts/niyadocts.html> accessed 9 January 2020.

See also the online database compiled by Stefan Baums and Andrew Glass, *Corpus of Gāndhārī Documents* at https://gandhari.org/a_corpus.php accessed 9 January 2020.

³ Burrow (n 2) doc. nr. 1.

describes the sources of law as dharma (a term that can mean correct conduct according to custom, but sometimes specifically indicates the Buddha's teachings), evidence, custom, and royal orders.⁴

Admittedly, we know very little about ancient Indian law because so few legal materials from ancient India survive. Akamatsu Akihito, who teaches at Kyoto University, has noted the close correspondence between the types of documents prescribed for use by the king in the *Arthashastra* and the variety of different shaped wooden documents found at Niya.⁵ We can conclude that the Indian legal tradition shaped local legal practice in the Kroraina Kingdom; the indigenous peoples had their own legal practices as well.

The Niya documents make it clear that they were written during an unsettled period of warfare and instability with continuous movement of people. Many parents were forced to give their children up for adoption. There were two types of adoption: if a parent paid a 'milk-payment' at the time the child moved to his or her new home, the child was supposed to be treated as a member of the family. But if the family made no 'milk-payment', then the child had to perform whatever tasks the adopting family specified, just as if the child were a slave. In multiple instances parents report that, despite 'milk payments', the adoptive families were not treating their children as they had promised to. The *Arthashastra* says nothing about such payments, or even the topic of adoption, so it is highly likely that this was a local practice limited to the Kroraina Kingdom, and not a general principle of Indian law.

Stein recovered caches of buried documents in several different households, some carefully arranged to form an archive. One type of document, called a double rectangular tablet, consisted of two pieces of wood that fit together like a cabinet drawer and its outer holder; once slotted together, they were tied together with string and sealed. Many of the documents in one cache (#516-92) involve a tax-collector named Ramshotsa.

In one dispute about a plot of land that Ramshotsa had bought from a monk, local officials cut the string around an earlier document so that they could consult it. As was the norm for this type of purchasing agreement, the original named the purchaser (Ramshotsa), the seller (the monk), the price, the presiding official, and the witnesses to the transaction. Having determined that Ramshotsa owned the plot in question, the presiding officials issued a new tablet, tied it, and sealed it.⁶ This document reveals the purpose of the archive: when disputes about ownership of a plot of land (or some other item) arose, the parties to the dispute and the presiding officials could consult the filed wooden documents to find out the original terms of the purchase.

The original purchasing document cited in the decision specifies: 'From now on in that land Ramshotsa has ownership, to sow, to plough, to give as a gift to another, to exchange, to do whatever he likes with it.' This same clause appears in records of the purchase of slaves. When Ramshotsa buys a girl named Smitsae after paying a camel and four sheep, the document asserts: 'So the scribe Ramshotsa has ownership over that girl Smitsae, to do whatever

⁴ For the sources of law, see L. N. Rangarajan (tr.), *Kautilya, The Arthashastra* (Penguin Books India 1992) 380. Thomas R. Trautmann, *Kautilya and the Arthashastra: A Statistical Investigation of the Authorship and Evolution of the Text* (Brill 1971).

⁵ Akamatsu Akihiko, 'Roran Niya shutsudo Karoshuti bunsho ni tsuite' ['On the Kharoshthi Documents from Loulan and Niya'] in Tomiya Itaru (ed.), *Ryusa shutsudo no moji shiryō: Roran-Niya bunsho o chushin ni* (Kyoto Daigaku Gakujutsu Shuppankai 2001) 369–425, 391–393.

⁶ Burrow (n 2) doc. nr. 582.

he likes with her.⁷ Another record provides a longer version of the clause: ‘From now on the scribe Ramshotsa has ownership of that woman, to beat her, to bind her, to sell her, to give her to others as a present, to exchange her, to pledge her, to do whatever he likes with her.’⁸ Again the same phrasing when a man was purchased: ‘From now on Lyipeya has ownership of that man, to sell him, to pledge him, to exchange him, to give him to others as a present, to do whatever he likes with him.’⁹ These statements of the owner’s right to abuse slaves are certainly shocking, but in the absence of any other information it is difficult to assess their accuracy. Much as we might be tempted to interpret these clauses as sources about relations between slaves and their owners, it seems much more likely that these clauses are simply boilerplate language, perhaps dictated by those who commissioned the document, perhaps inserted by the scribe himself.

The appearance of identical clauses in Gandhari-language contracts reveals something important about *co-existing legal traditions* on the Silk Road. As the Niya documents show, people were constantly moving from one place to another, sometimes by choice (as when an imperial envoy visited a neighboring kingdom), but more often because they had to flee their homelands. Perhaps their homes were destroyed during a battle, or perhaps they simply feared for their own safety. Whenever newcomers settled in their new homes, as the Gandhari migrants did in Niya, they brought their legal traditions – specifically the wording of agreements – with them. And when they drew up documents with people from other places, it was only natural to compare the wording in existing templates, translate, and then include whichever clauses seemed most useful, no matter whether they originated in a different legal tradition. The moments when people discussed the wording of contracts before drawing up the final versions were when they could combine elements of different legal traditions. In the case of the Kroraina Kingdom, they combined aspects of Indian law, such as the use of different shapes of wooden documents, with local practices, like milk payments. Due to the limitations of the sources, we do not know whether this legal system spread beyond the borders of the Kroraina Kingdom.

III LAW IN TURFAN UNDER THE RULE OF THE KINGDOM OF GAOCHANG

Unlike the small village of Niya in the Kingdom of Kroraina, our second example, Turfan, was a much larger city that served as the capital of the Gaochang Kingdom between 500 and 640. Chinese sources give the population of Turfan as 37,700 people living in 8000 households in 640,¹⁰ and we can assume that figure is roughly accurate for the period before 640, too.¹¹ Like Niya, Turfan had a mixed population: the original residents, the many Chinese who came to settle there, and the Sogdians, who were the most important group of traders on the Silk Road.

⁷ *ibid* doc. nr. 589.

⁸ *ibid* doc. nr. 590.

⁹ *ibid* doc. nr. 591, 126–127.

¹⁰ Liu Xu, *Jiu Tang shu* [*The Old History of the Tang Dynasty*] (Zhonghua shuju 1975) Chapter 198, 5295.

¹¹ For a discussion of the populations of different oases in the eighth century, see Étienne De La Vaissière, ‘Early Medieval Central Asian Population Estimates’ (2017) 60 (6) *Journal of the Social and Economic History of the Orient* 788–817.

The Sogdians' home region of Sogdiana, a region straddling modern-day Uzbekistan and Tajikistan, included the important cities of Bukhara and Samarkand. Sogdiana marked the easternmost section of the Iranian world, whose center lay far to the west in the Fars region of Iran and was the core of the Sasanian Empire (224–651). In Sogdiana, the locals spoke Sogdian, an Iranian language distinct from Middle Persian but related to it. Independent kings governed the oasis cities of Sogdiana, just as they ruled the oases ringing the Taklamakan.¹²

The legal traditions of these different oases in Sogdiana drew on the ancient texts of Zoroaster, who may have lived sometime around 1000 BCE, but they were not necessarily identical.¹³ Each ruler had the ability to implement whichever laws he thought best. Zoroastrian teachings maintained that truth-telling was the highest good of all,¹⁴ and rulers implemented justice in their realms as part of their charge to strengthen the forces of good and weaken those of evil. The Sogdian legal code is not extant and only a few contracts in the Sogdian language survive.¹⁵ One of the most illustrative examples is from Turfan, to be discussed below.

Sogdian traders were active in China in the fourth century, if not earlier, as letters contained in a mailbag abandoned in northwest China reveal, and many more Iranians moved eastward to China after the mid-seventh century, as refugees fled before the advancing Islamic armies. Most of the Sogdians who came to China settled in the Western Regions, which roughly corresponds to today's Xinjiang Uygur Autonomous Region, and other Sogdians moved even farther east where they formed communities in almost every Chinese city.¹⁶

Turfan was on the overland trade route connecting the oases along the northern edge of the Taklamakan Desert, now usually referred to as the northern route. Going through Dunhuang and Kashgar, the northern route connected the Tang capital of Chang'an (modern Xi'an in Shaanxi province), a thriving metropolis of 500,000, with its major trading partners in Sogdiana.

The oasis city of Turfan, about an hour's drive southwest of the modern city of Urumqi, was a popular destination for Sogdians, who referred to it as 'Chinatown'. This was a surprising label because between 500 and 640 Turfan was not part of China. It was the capital of the independent Gaochang Kingdom, whose residents spoke a Turkic language. Even so, the locals studied Chinese in school, and the town was home to a large Chinese community.

Turfan's residents kept their records in Chinese as well, and archeologists have recovered from the Astana graveyard over one hundred contracts dating between 500 and 640, when Turfan was under the rule of the Gaochang Kingdom.¹⁷ Turfan's dry climate has preserved

¹² Étienne De La Vaissière, *Sogdian Traders: A History* (James Ward tr., Brill 2005).

¹³ The Greek name of the Iranian prophet Zarathustra was Zoroaster, the name we use in modern English.

¹⁴ Stanley Insler, *The Gāthās of Zarathustra* (Brill 1975).

¹⁵ Three Sogdian-language contracts were found at the site of Mount Mugh: a marriage contract dated 710, a contract for the rental of a mill, and one for the sale of a plot of land. Vladimir Aronovich Livshits, *Sogdian Epigraphy of Central Asia and Semirech'ye* (Tom Stableford tr., Corpus Inscriptionum Iranicarum and School of Oriental and African Studies 2015) 17–51.

¹⁶ The leading scholar to write about Sogdian settlements in China is Rong Xinjiang of Peking University. For a summary of his findings, see Valerie Hansen, 'Review: New Work on the Sogdians, the Most Important Traders on the Silk Road, A.D. 500–1000' (2003) 89 (1/3) *T'oung Pao Second Series* 149–159.

¹⁷ The titles of the contracts (but not the contracts themselves) have been translated into English. See the Table of Contents in Tatsuro Yamamoto and On Ikeda (ed.), *Tun-huang and Turfan Documents Concerning Social and Economic History: III Contracts* (The Toyo Bunko 1987). See also Helen Wang,

desiccated corpses, beautiful silks, multiple wooden figurines, and over two thousand documents written mainly in Chinese, a series of finds that make the oasis one of the most important archeological sites on the Silk Road.

Of the 465 tombs in two graveyards excavated between 1959 and 1975, 202 produced documents. These materials survive because the residents of Turfan buried their dead in shoes, hats, and belts made from recycled paper, which often had writing on one or both sides.¹⁸ (Invented in the second century BCE, paper became the prevailing writing material used throughout the Chinese realm by the third century CE.)

Turfan's residents used Chinese-language contracts to buy or rent land and when adopting children. Many were loan agreements for small amounts, a few pecks of grain, several bolts of silk, or between two and forty silver coins. Usually a cultivator needed to borrow money so that he or she could buy seed in the spring; typically, the borrower pledged to repay the loan after the harvest or to incur a penalty.

The Astana graveyard produced hundreds of contracts in Chinese and one in Sogdian dating to 639, the year before the Tang conquered the oasis. It records the 'irreproachable permanent purchase' of a female slave named Upach by a monk named Yansyan for the price of 120 pure silver coins. Once the sale is complete, the contract specifies: 'Accordingly, the monk Yansyan himself and his sons, grandsons, family, and descendants may at will hit her, abuse her, bind her, sell her off, pledge her, give and offer her as a gift, and do whatsoever they may wish to her.'¹⁹ This clause echoes the wording of Ramshotsa's agreements from three centuries earlier. The language of the document has changed (Ramshotsa's document was in Gandhari, and this is in Sogdian), but the identical fixed phrases show how people drafting agreements could copy clauses from different legal traditions, in this case the Indian tradition of the Kroraina Kingdom and the Iranian tradition of the Sogdians. We can surmise that, as they negotiated contracts together, people who spoke different languages borrowed fixed phrases from each other. This process facilitated the translation of clauses like that in the Niya contracts into Sogdian and their use in a Sogdian-language contract written some three hundred years later.

Scholars still do not know to what extent the Gandhari materials from Niya drew on the legal traditions of India, and, similarly, it is not clear to what extent the Sogdian materials reflect Iranian legal traditions, specifically those of the Sasanian Empire (224–651). The Sasanian law code is not extant, but a seventh-century casebook, *The Book of a Thousand Judgments*,²⁰ and a ninth-century encyclopedia reveal its basic principles.²¹ *The Book of a Thousand Judgments* presents short rulings on a wide range of topics: the maintenance of religious shrines, inheritance, marriage, and various types of contracts. Although Sasanian law recognized oral agreements, in most cases the parties to a contract drew up written agreements,

Money on the Silk Road: The Evidence from Eastern Central Asia to c. AD 800 (British Museum Press 2004).

¹⁸ Valerie Hansen, 'Introduction: Turfan as a Silk Road Community' (1998) 11 (2) *Asia Major Third Series* 1–6; Zhang Guangda and Rong Xinjiang, 'A Concise History of the Turfan Oasis and Its Exploration' (1998) 11 (2) *Asia Major Third Series* 13–36.

¹⁹ Yutaka Yoshida, 'Appendix: Translation of the Contract for the Purchase of a Slave Girl Found at Turfan and Dated 639' (2003) 89 (1/3) *T'oung Pao Second Series* 159–161.

²⁰ Anahit Perikhanian, *The Book of a Thousand Judgements (A Sasanian Law-Book)* (Mazda Publishers in association with Bibliotheca Persica 1997).

²¹ Jamsheed K. Choksy, 'Loan and Sales Contracts in Ancient and Early Medieval Iran' (1988) 31 *Indo-Iranian Journal* 192.

which were signed in front of witnesses and placed for safekeeping in the Office of Registry.²² The Sogdian-language contract may have been placed in some type of similar office at Turfan; it has an abbreviated title on the back that served the same function as a label on a modern file folder.

Each contract had an oral version, sworn to by witnesses, and a written version signed (or marked with some kind of sign) by witnesses. This facilitated the contract's use by Silk Road residents who may not have been literate in either their native tongue or the language in which the contract was written. As long as the terms of the contract were explained clearly at the time of signing, the signatories could be sure that they understood the contract's contents.

IV TURFAN UNDER TANG DYNASTY RULE

Directly east of Turfan and the Taklamakan Desert lay China. A major change to Turfan's legal system occurred in 640 when the Tang Dynasty conquered the oasis and enforced the Tang Code, which was initially drafted during the reign of the founding Emperor Tang Gaozu. The work continued under his son Tang Taizong, who ruled from 626 to 649. The code was completed in 653, but the version that survives today dates from 737 (it is probably close to that of 653).²³ The Tang Dynasty implemented this code in the oases ringing the Taklamakan Desert following their conquest of the region in the 640s.

The legal code of the Tang Dynasty is the first Chinese legal code to survive intact and Wallace Johnson has translated the entire code, with precision and clarity, into English. The code divides the Chinese population into three groups: the privileged, commoners, and inferior groups (*jianmin*), and gives different punishments depending on their membership in each group.

The Tang Code had one section specifically addressing disputes between the Chinese subjects of the Tang Emperor and foreigners:

Article 48: 'Crimes Committed against Each Other by Foreigners'

48.1 All cases involving foreigners of the same nationality who have committed crimes against each other will be sentenced following their own customary law.

48.2 Cases involving those of different nationalities who have committed crimes against each other will be sentenced following Chinese law.

Subcommentary: Foreigners refers to persons of those barbarian countries who have their own rulers and leaders. They each have their own habits and customs and their regulations, and the laws are not alike. In cases involving those of the same nationality who have committed crimes against each other,

²² *ibid* 193.

²³ Wallace Johnson (tr.), *The T'ang Code, Volume I, General Principles* (Princeton University Press 1979); Wallace Johnson (tr.), *The T'ang Code, Volume II, Specific Articles* (Princeton University Press 1997). Johnson's introduction gives an excellent overview of the code and the circumstances leading to its composition, vol. I, 3–38.

the court must ask about the regulations in their native country and sentence the offense following their customs and laws.

In all cases involving those of different nationalities who have committed crimes against each other, such as one person from Koryo and another person from Paekche [countries in the Korean peninsula], Chinese law will be used to sentence and decide the punishment.²⁴

Recognizing that the societies around them had complex legal systems, the drafters of the Tang Code instructed Chinese judges to apply the ‘customs and laws’ when deciding cases involving non-Chinese, an indication that information about other countries’ legal practices was available to those living inside the Tang empire. This clause mentions two different groups of Koreans (the Baekje and Goryeo) as foreigners, and many of the expats living in Tang-Dynasty China were Sogdian.

Emperor Taizong, who promulgated the Tang Code, wanted to expand into Central Asia. After overthrowing his father in 626, Taizong (ruled 626–649) asked the rulers of the oasis states ringing the Taklamakan Desert to accept him as their overlord. He signed treaties with those who agreed and sent armies to conquer those who did not, like the King of Gaochang. In 640, when Gaochang fell to the Tang armies, Turfan became one of over 300 prefectures in Tang China, fully subject to all the provisions of imperial law.

One of the first measures of the Chinese occupiers was to conduct a census. The Tang Code specified that a census should be taken every three years and delineated the different stages of the process: officials had to count the residents of each household, check the registers, and then aggregate the numbers.²⁵ Excavated documents confirm that Chinese officials followed the Tang Code rules about household registration quite closely, which suggests that they implemented the other articles of the code as well. This was not international law: this was Chinese law, which had specific provisions for dealing with disputes involving non-Chinese residing in China.

When Tang administrators drew up these registers, they did not distinguish between Chinese and non-Chinese residents. Clerks recorded the names of the household head, wife, children, elderly, and servants, without indicating anyone’s country of origin. The only way modern historians can distinguish Sogdians from other migrants to China – and from the Chinese themselves – is by their distinctive surnames and given names. These naming practices are important because they make it possible to identify complainants as either Chinese or Sogdian.

V A DISPUTE BETWEEN A SOGDIAN AND HIS CHINESE PARTNER

A dispute between a Chinese merchant and his Sogdian partner reveals much about the treatment of non-Chinese in the Tang Dynasty legal system during the seventh and eighth centuries CE. Because the conquered oases of modern Xinjiang came under direct Chinese rule in the 640s, officials applied the provisions of the Tang Code to all the local inhabitants, both Chinese and non-Chinese. Several affidavits concern a loan that a deceased Sogdian merchant made to his Chinese partner. In 670, the merchant’s younger brother Cao Rokhshan brought

²⁴ Johnson, *The T’ang Code, Volume I* (n 23) 252.

²⁵ Ikeda On, ‘T’ang Household Registers and Related Documents’ in Arthur F. Wright and Denis Twitchett (eds), *Perspectives on the T’ang* (Yale University Press 1973) 121–150.

a suit in Turfan against a Chinese merchant, Li Shaojin, whom he claimed had borrowed 275 bolts of silk from his elder brother without ever paying the loan back.²⁶ (These documents were recovered from the Astana graveyard because they were recycled to make a paper garment for the deceased.)

Merchant Li borrowed money in the form of silk – and not coins – because recurring shortages of coins meant that the Tang Dynasty had a system of mixed currencies. Bolts of silk, fixed measures of grain, and coins were all recognized by the Tang authorities. In 670, 275 bolts of silk could buy around seven camels (one contract from 673 records a price of forty bolts per camel). This information suggests that Merchant Li was able to use 275 bolts of silk to buy a load of goods and perhaps the animals to carry it. This was a small transaction in the Silk Road economy; the Tang government regularly spent much larger amounts. In 745 the Tang authorities shipped 15,000 bolts of silk to pay the salaries of troops and local officials stationed in a single garrison in the oasis town of Dunhuang.²⁷

In addition to Rokhshan and Merchant Li, the case involved two other Sogdian merchants, Cao Guoyi and Cao Bisuo. Their shared surname of Cao indicates that they hailed from the same part of Sogdiana as Rokhshan, but the three men were not necessarily kin. The three Sogdians and the Chinese merchant all lived in the capital city of Chang'an (modern Xi'an). These men, who traveled frequently to the different trading oases of the Taklamakan Desert, probably did not spend much time in the Tang capital, but their wives and children lived there year-round. The capital had several neighborhoods where Sogdians gathered, each with a Zoroastrian temple that had a fire altar, where they could perform the rites of their homeland.

Rokhshan brought the suit on behalf of his deceased elder brother, who had died several years earlier. Although none of the parties to the case lived in Turfan, Rokhshan brought the suit there possibly because between 670 and 679 it was the seat of the Anxi Protectorate, an administrative district including the Kingdom of Kucha, where his brother had disappeared. The court in Anxi Protectorate implemented the provisions of the Tang Code: Rokhshan should have had no expectation that the presiding officials would apply Iranian law to his case. He was simply seeking the restitution that he felt was due to him under Chinese law.

According to Rokhshan's testimony, Merchant Li and his brother formed a partnership in Gongyuecheng (modern-day Almaligh), which lies in the Yili River basin close to modern China's border with Kazakhstan. Having no common language, the two men must have communicated through interpreters. After becoming partners, Merchant Li borrowed 275 bolts of silk from the deceased older brother.

When the two men parted, they agreed to meet in Kucha, an oasis some 360 kilometers to the south. Accompanied by his nephew, the Sogdian was leading two camels, four cattle, and one donkey that carried his wares: saddles, clothing, bows and arrows, and other various goods

²⁶ Xinjiang Weiwuer zizhiqu bowuguan and Wuhan daxue lishi xi (eds), *Tulufan chutu wenshu* [Excavated documents from Turfan] (vol. 1–4, Wenwu chubanshe 1992–96) vol. III 242–247. For more about this case, see Huang Huixian, 'Tang Xizhou Gaochangxian shang Anxi duhufu diegao wei lu shang xun wen Cao Lushan su Li Shaojin' ['An Explication of the Document Entitled, Draft "Die" Report from Gaochang Sub-Prefecture, Xizhou Prefecture to Anxi Protectorate Recording the Testimony from both Sides of those in the Dispute in which Cao Lushan Sued Li Shaojin, Tang Dynasty'] in Tang Zhangru (ed.), *Dunhuang Tulufan wenshu chutan* (Wuhan daxue chubanshe 1983) 344–363; Arakawa Masaharu, 'To teikoku to Sogudojin no koeki katsudo' [Sogdian trading activity with the Tang empire] (1997) 56 Toyoshi kenkyu 171–204.

²⁷ Hansen (n 1) 305.

worth 200 bolts of silk. This typical Silk Road load was small enough that a few pack animals could carry it. The Sogdian peddler never arrived at his destination. One witness speculated that he died at the hands of bandits who stole his cargo of weapons and saddles.

We can understand why the Chinese merchant never paid back the 275 bolts of silk. After all, the man who had lent him the silk had disappeared and was presumably dead. In his initial affidavit, when asked whether he had received the loan, he claimed, ‘At Gongyuecheng I never obtained the bleached silk from the Sogdian. Nor did I expect to go to [gap in text] with the Sogdian and then return to Kuche. Inasmuch as I was not in partnership with him, I genuinely don’t know ...’. He denied everything. Court officials repeatedly asked him whether he had received the loan, and he consistently maintained that he had traveled alone.

The two Sogdian merchants (Cao Guoyi and Cao Bisuo) who had witnessed the original loan of the 275 bolts of silk challenged his testimony. They swore that Merchant Li had indeed borrowed the silk from their deceased compatriot. Court officials could not consult the original contract because the Sogdians did not have the deceased man’s copy and the Chinese merchant denied any knowledge of it. Still, according to Tang law, oral testimony had the same legal standing as a written contract.²⁸ Ruling in Rokhshan’s favor, the court ordered the Merchant Li to pay back 275 bolts of silk in addition to interest. (Because the documents come to an abrupt stop, we have no way of knowing if Merchant Li actually complied with the ruling.)

Whatever the eventual outcome, it is clear that the courts of the Tang Dynasty were willing to hear a case brought by a Sogdian against a Chinese subject, and, at least in this one instance, they ruled against a Chinese merchant in favor of Sogdians. All of this is quite remarkable given that the dispute occurred in 670, long before the rise of anything modern jurisprudence would recognize as international law.

The dispute between the Sogdian and Chinese merchants over 275 bolts of silk is but a single example that survives because of an extraordinary set of circumstances. Even so, it reveals much about the conditions facilitating Silk Road trade.

The provisions about foreign laws in the Tang Code document the respect of Chinese authorities for the legal systems of neighboring countries. In this instance, the presiding magistrate accepted a case in which there was no written contract, and in which three of the four parties involved were not Chinese, showing that Tang courts would readily accept disputes involving foreigners. The willingness of the Turfan judge to hear Rokhshan’s case on behalf of his deceased brother illustrates the extent to which the Tang legal system supported the enforceability of contracts, even of private oral agreements.

The residents of the oasis cities north and south of the Taklamakan Desert lived in a world with multiple legal traditions: the Indian, the Iranian, and the Chinese, in addition to those of the indigenous peoples. Migrants to the region coming from India and Iran brought a knowledge of the law with them, which we can see most clearly in the contracts they drew up after they arrived. Because of proximity, the Chinese tradition had the greatest influence on the region. Recall that the Gaochang rulers adopted Chinese as the language of administration and borrowed freely from Chinese law. The influence of Chinese law became even more pronounced after the Tang Dynasty conquered multiple Silk Road cities and directly implemented its laws throughout the region. Remarkably, the Tang Code urged Chinese judges to consult foreign laws when deciding disputes involving non-Chinese litigants. All these different legal

²⁸ Valerie Hansen, *Negotiating Daily Life in Traditional China: How Ordinary People Used Contracts* (Yale University Press 1995) 6–7.

systems contributed to a shared framework from which the rulers of Silk Road oasis cities could draw as they designed a legal system for their own domain. The most remarkable aspect of the co-existing legal traditions of the Silk Road was their multiple sources and their flexibility, traits that characterized business and religious practices as well.

VI FUTURE RESEARCH DIRECTIONS

Excavated documents pose the main challenge to those writing Silk Road history because they tend to stop just at the point before they give the key information the investigator wants to know. The discovery of new materials can sometimes fill in these gaps, and in recent years most new documents have surfaced in the Silk Road oasis of Khotan, just west of Niya.²⁹ In many instances these are individual contracts, records of business deals, or legal cases, and assessing their typicality remains an ongoing challenge. Comparisons of the Silk Road trade with trade in other regions such as the Mediterranean or Africa offer one promising line of inquiry.³⁰ Further studies of the different legal traditions present on the Silk Road – Indian, Iranian, or Chinese – will also help analysts to decide which legal concepts came from these three traditions and which were indigenous to the oasis states of the Silk Road.

FURTHER READING

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 Wallace Johnson, *The T'ang Code, Volume I, General Principles* (Princeton University Press 1979).
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 Étienne De La Vaissière, *Sogdian Traders: A History* (James Ward tr., Brill 2005).
 Susan Whitfield, *Silk Roads: Peoples, Cultures, Landscapes* (University of California Press 2019).

²⁹ Zhang Zhan, 'Secular Khotanese Documents and the Administrative System in Khotan' (2018) 28 *Bulletin of the Asia Institute* 57–98.

³⁰ Peregrine Horden, 'Mediterranean Connectivity: A Comparative Approach' in Mihran Dabag et al. (eds), *New Horizons: Mediterranean Research in the 21st Century* (Ferdinand Schöningh 2016) 211–224.