

Preliminary Remarks on Bactrian Diplomatics

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*ad Nicholaum sexagenarium,
magistrum et amicum*

Civil documents in Middle Iranian and Central Asian languages have been subjected to a limited and not as thorough an examination as have religious texts to date. Confessional documents are admittedly more accessible given that most are translations from known originals in other languages and do permit one to surmise enough data from the given context. This is, however, not so with texts of a legal or official nature. They are, in the main, written cursively and contain obscure content and nomenclature. Despite the limits this imposes on our comprehension, the employment of stereotyped phraseology in legal documentation, howsoever pedestrian and repetitive, enables the philologist and, *a fortiori*, the historian to ascertain its evolvement. And it is particularly useful in the case of documents from Afghanistan and Xinjiang where an assortment of texts in languages, Iranian and non-Iranian, contain formulaic phrases which furnish us with a reasonably helpful base for investigating the daily, secular life of the inhabitants of *Iran extérieur*, namely, lands Iranian in language and inspiration.

It is fitting then to recognise and include diplomatics alongside codicology, epigraphy, numismatics, palaeography and sphragistics, as a subdiscipline of Iranian philology hitherto overlooked because of the paucity and dispersal of the sources. The chief concern of diplomatics or the study of legal and administrative records is to distinguish between genuine material and forgeries, the latter a familiar bane in Iranistics. A foundation for this is now thankfully in place since NICHOLAS SIMS-WILLIAMS speedily and superbly deciphered, authenticated and translated a corpus of Bactrian contracts and letters.¹ Additionally, P. O. SKJÆRVØ's² authoritative and exhaustive edition of Khotanese manuscripts from The British Library's Oriental and India Office Collection, London is a tremendous boost. Both of these plus Old Persian administrative tablets as well as Parthian and Sogdian economic documents – to be presently complemented

1 SIMS-WILLIAMS 1996, 2000 [2001] and 2007. All his Bactrian publications to date are now listed in a *Festschrift* for which see SUNDERMANN *et al.* 2009, pp. xxv–xxxviii.

2 SKJÆRVØ 2003. This reprint is rather difficult to obtain and contains very slight corrections to the original and still available 2002 edition.

by the able labours of PHILIPPE GIGNOUX, RIKA GYSELEN and DIETER WEBER on the Bancroft Berkeley archive³ in Middle Persian – are adequate ballast to sustain research, elicit students and invite contributions from classicists and orientalists, especially those concentrating on Late Antiquity. Only Khwarezmian remains the Cinderella of Iranian studies and, if the recent history of Bactrian is anything to go by, a serendipitous find may herald yet another *résurrection* in Middle Iranian.⁴

This work-in-progress *scholium* examines aspects gleaned from a comparative-contrastive survey of legal contracts in Bactrian, Sogdian, Khotanese, Zoroastrian Book Pahlavi, Old Tibetan and Gandhari. The Bactrian serves as a literary control. Only two parameters can be demonstrated here: the witnesses and penalty clauses thematically classified under Matrimony and Divorce; and Dispute Settlements. Features dealing with witnesses and penalties are two salient rubrics for validating texts. Validation refers to the legal authority or recognition process that endows a document and the said deed or transaction therein with a legal, binding status. It was compulsory and customary so that the document could be formally drafted, certified and upheld in the event of a referral or dispute.

Witnesses

Marriage and divorce

Language	Text	Date	Witnesses	Penalties
Bactrian	DOC A	AD 332	x	x
Sogdian	Nov. 3	c. AD 709/710	x	x
	Nov. 4	c. AD 709/710	x	x
Book Pahlavi	<i>Model</i>	c. AD 620?–651?	x	x
Old Tibetan	Ch.frag.62	c. AD 808/820/832	x	–
Gandhari	573	c. AD 237?–321?	x	–
	MC	c. AD 359?	x	x

Seven documents are presented here which reveal interesting insights into the local habits and histories of the concerned parties. While the second Sogdian contract is a bride's copy, hence annexure, we have sole samples in the rest save two in Gandhari, one each of matrimonial and divorce settlements. Both are unrelated. None of the contracts is explicitly confessional in tone despite the

³ AZARPAY 2003, pp. 3–4; GIGNOUX 2008, pp. 132–137.

⁴ Felicitously in TREMBLAY 2003, pp. 119–133, a review essay of SIMS-WILLIAMS 2000 [2001].

theme of betrothal. This also applies to the Zoroastrian sample where the only allusion made to creed is a mention that the bride shall not “deviate from Iranian conduct and practice of the Good Religion” *ērīh ud wēhdēnīh be nē war-dom*.⁵ If anything, all our samples are this-worldly and practically drawn up delineating the bride’s welfare as well as the terms and conditions of alimony upon annulment. All of the attesters are noted by their patronymic appellation. In the case of our Pahlavi template or model contract just the generic expression *wahman* “so-and-so”⁶ is used whereas in Bactrian, Old Tibetan, Gandhari and Sogdian, the witnesses are distinguished by a variety of professional titles or honorifics. In Bactrian the “chief of the district” *αυδαγοβιδο* and a “master craftsman” *αβιβαδο* are cited;⁷ in Old Tibetan a “priest” *ban-de*;⁸ and in Gandhari (DOC MC)⁹ a bureaucrat with the title *ogu* – widely-attested for an official of significance in Gandhari contracts, quite plausibly a borrowing in that language: this official is always listed before other rank-holders – appended to his name and the title of *kāla cūvalayimna* (DOC 573) plus name accompanying another individual without title or patronymic.¹⁰ In both Sogdian texts we have one witness mentioned with the honorific title “elder” *xwyst* attached to the name *wxwswk’n* whose father *βrxwm’n* must have been a ruler of Samarkand in the early to mid seventh century AD thus suggesting that these contracts were drafted there.¹¹ Only in the Bactrian text do we find among the witnesses a group denoted as the “freemen of Asteb”, *αζαβοργανο*, all male and none indentured. This specific mention of social status is absent in the contrasting specimens as well as the fact that the Bactrian one reiterates that those absent as witnesses during the preparation of this contract have “attested on the other manuscript”, *αβο μο νιγο λιστοβαρο*, a feature absent in others and thereby pointing to the existence of a once duplicate copy. Only in Bactrian, Old Tibetan and Gandhari are the substantives “witness” or “witnesses” actually employed in the clause. Further, only in Bactrian, unlike the rest, is the expression, “in the presence of” preposition *πισο* (lit. “before”) plus the name of the witness. The Sogdian formulary begins by stating “then there was”, *rtγ ’wδ wmt*, a point in fact confirmed in other economic documents from Mt. Muγ.¹² In Gandhari and Old Tibetan no distinct phraseology occurs except for the laconic noting of witness plus name with a title, if applicable.

5 MACUCH 2007, p. 186; *eadem* 2007, pp. 183–204 is now the standard study and an improvement on the long-standing albeit still useful contribution by MACKENZIE and PERIKHANIAN 1969, pp. 103–112.

6 Thoroughly surveyed in SIMS-WILLIAMS 1990, pp. 10–12.

7 SIMS-WILLIAMS 2000 [2001], pp. 32–33.

8 TAKEUCHI 1995, p. 162.

9 LIN 1990, p. 284.

10 BOYER *et al.* 1927, pp. 211–212.

11 Tentatively GRENET *apud* ЯКУБОВИЧ 2006, p. 323.

12 *Vide* B-4 and B-8, “И здесь (‘там’) были” in LIVSHITS 1962, pp. 47–48, 57.

In diplomatics, documents are broadly divided into three parts for study: the introduction (protocol), the main text (context) and final protocol or concluding formulae. Structurally only in the Bactrian (DOC A) do we have a witness attested after the date stated at the outset. The Gandhari divorce settlement has this inserted towards the start of the concluding section of the deed. In the Sogdian, Old Tibetan and Gandhari marriage and divorce contracts, the witnesses are enumerated towards the conclusion of the document or final protocol, which comprises the subscriptions, namely, lists of scribes or witnesses to the enactment.

Dispute settlements

Language	Text	Date	Witnesses	Penalties
Bactrian	N	AD 629	x	x
	O	AD 662	x	x
	R	AD 674	x	x
	S	AD 692	x	x
	Uu	AD 722	x	x
	X	AD 749		
Khotanese	318.S1 P 103.49	AD 769?	x	?
	365 SI M 25	–	x	–
Gandhari	345	c. AD 237?–321?	x	x
	436	c. AD 237?–321?	x	–

These are ten documents, six in Bactrian and two each in Khotanese and Gandhari. All ten deeds, as regards both witnesses and penalty clauses, are precisely drafted in their respective languages. They are specific and at the same time banal for such is the nature of legal protocol. Here too the Bactrian witnesses are listed after the calendrical introduction and before a summary of the dispute in question. Witnesses are present in one Khotanese example and absent in the other. Both Gandhari contracts contain witnesses and, as in the Khotanese, are noted towards the conclusion of the document. A flourish of titles is evident from our dated Bactrian collection thus throwing considerable light on historical developments in north-central Afghanistan between AD 629 and 749. Turkish titulature is clearly discernible when appended to witnesses such as *qaghan*, *tapaghlig*, *iltäbir* and *inal tarkhan*, Bactrian $\chi\alpha\gamma\alpha\nu$, $\tau\alpha\pi\omicron\alpha\gamma\lambda\iota\gamma\omicron$ $\upsilon\iota\lambda\iota\tau\omicron\beta\eta\rho\omicron$ and $\iota\epsilon\nu\eta\lambda\omicron$ $\tau\alpha\rho\chi\alpha\nu\omicron$ respectively in DOC N;¹³ *tudun* or Bactrian $\tau\alpha\delta\omicron\nu\omicron$ in DOCs S and UU;¹⁴ and familiar Bactrian ones such as “ruler” $\chi\alpha\rho\omicron$

13 SIMS-WILLIAMS 2000 [2001], pp. 74–75.

14 SIMS-WILLIAMS 2001 [2005], pp. 16–17, 20–21.

plus toponym and “lord” χοαδηο plus toponym in DOCs N, O and X; and a “treasurer” υομαρογοαρο with his name and toponym is in DOC S which was written in the principality of Gaz and which also counted a Turkish *tudun* official sometime as a witness. DOC Uu is the only one among these dispute settlements wherein a deity of the Oxus, οαχβο, is invoked as a witness and described as both “a god and king of gods” βαγο οαχβο βαγανο βαυο.¹⁵ Other witnesses in the same text consist of an Indian personal name attested in a Middle Iranian civil document for the first time, Rahul, ραυολο as a “leader of the people” or λιζαγοσιγο καρραοαλο.¹⁶ Minor officials hauled in as witnesses happen to be a “steward” φραμαλαρο (DOC N) and “foreman” καροδαρο (DOC Uu). Two individuals lacking any sort of designation are noted as witnesses in DOC Uu and Gandhari DOC 345. And whereas DOC O states “in the presence of other freemen”, μανδαρουανισο αζαδοβορογανο¹⁷ as witnesses, DOC X we have “citizens (and) freemen” βαροιο ωδασιο αζαδοκαρονο as well as the title of “commander of the (royal) household army”, καδαγοστανο σπαλοβιδο, a military title-holder as a witness, the only such case among these dispute settlements.¹⁸

In the Khotanese 318 SI P 103.49 a list of witnesses is offered only at the end of the document. There is no mention of any titulature, designation or affiliation for either of the disputants. Here and in the Khotanese 365 SI M 25, there is simply the enumeration of the witnesses, the word for which is attested in varying spellings for the singular *bye/byi* in both Late Khotanese texts.¹⁹ Document 365, however, does contain the Sanskrit loan for *ācārya* “religious teacher”, Khot. *āśi’rī* appended to the names of both witnesses, one of whom has the honorific *dvīlai* “the Knower of the Two Pitakas”. In 318, it might be pointed out, there is a break in the enumeration of the witnesses to note that the debtor has applied his finger-seal, presumably as an afterthought by the scribe, followed by the mention of a remaining witness. (Both the Khotanese and the Old Uyghur contracts of my larger study routinely reveal the employment of an abbreviated style whereby witnesses are cited by omitting the third singular or plural copulative particle.)

In both Gandhari contracts we have certain personages with designations and some others without. There appears to be no order of social precedence in listing them or in contrast to the Khotanese and the meticulously noted descending order in all six Bactrian DOCs N, O, R, S, Uu and X. The titles evinced in the Gandhari are the ubiquitous *ogu*-official, a *tomgha*, a *tasuca*, a *camkura*, and a “magistrate in charge of the boundary”, *simici mahatva*, and scribes.²⁰ The witnesses with these titles occur solely in DOC 436 which text, compared to

15 *Ibid.*, pp. 20–21.

16 *Ibid.*

17 SIMS-WILLIAMS 2000 [2001], pp. 80–81.

18 SIMS-WILLIAMS 2000 [2001], pp. 136–137.

19 EMMERICK/VOROB’ĖVA-DESJATOVSKAJA 1993, pp. 156, 217.

20 LIN 1990, p. 284; Boyer *et al.* 1920, p. 125; *eidem* 1927, p. 158.

all the others, also invokes as witnesses, “the noble people” *jamna asade*, somewhat in the spirit of Bactrian DOC X, “citizens (and) freemen” βασιμιο ωδασιμιο αζαδοκαρνο.

Penalties

Marriage and divorce

All of the samples carefully elucidate penalties for acts of omission or commission. And in so doing they assuredly provide interesting glimpses into the societies and periods in question. The Bactrian contract, a polyandrous arrangement, is remarkably odd in that the employees of the said grooms following the disposition, the vital core or legal enactment of the document, are incorporated in the clause covering sanction, the threat of punishment. Neither the prospective father-in-law nor his sons are invoked or deemed culpable for any untoward conduct towards the bride save that the grooms may not acquire another wife or “free concubine” against her wishes. An exact parallel is observable in the Sogdian marriage contracts where the groom is prohibited from taking another wife or concubine “that will not please Čat”, *ky ZY ZNH ctyH xwty L' ry-z't*.²¹ The adjective αζαδο, in Bactrian, if of any sociological interest, is attached to the noun “concubine” ρωφσο whereas no such qualification is noted for “wife” ολο. In Sogdian it is absent on both counts. In the event that the grooms take another wife they are liable to pay twenty *dinārs* emphasised as of “struck gold” ζαροζιδγο to both the royal treasury and the “opposite party”, Bactrian παδαρολογο. This feature of double compensation is missing in our Gandhari, Sogdian, Pahlavi and Old Tibetan samples. In Sogdian Nov. 3 the groom is liable to pay “thirty good, pure dirhams” described, unlike in the Bactrian with reference to the intrinsic quality, as *šyrh* “good” and *kr'nh* “pure” with the Sogdian adjectives reiterated in Nov. 4 the bride’s annexure, but this time with the amount of “one hundred *dirhams*, a fine expressed twice as of “silver” *n'krtync(h)*.²² Note that in the Pahlavi model, the qualification made to the sum in question is by the declarative, “prevalent in the country”, *šahr āwarišn*. Further, in the Bactrian, the employer and his three sons solemnly declare not to “assign duties and tasks” to the wife nor to appropriate ownership or jurisdiction over her potential offspring. This is critical since any such assurance – so one might have reasonably conjectured – to the wife is lacking in the Old Tibetan counterpart, which in effect is a *gnyen-tshongs*, a “completed

21 LIVSHITS 1962, p. 23: “которая самой чате будет не удобна”.

22 LIVSHITS 1962, p. 25: “серебряных”. The worth of the currency is not reiterated, as is common practice for Sogdian scribes a line-filler is used to fill the remaining space in the line.

sale marriage”.²³ Again, the employers of the groom and not the other two in the Bactrian contract are culpable for this and are required to pay an identical amount both to the royal treasury and the “opposite party”.

Only in the Sogdian and Pahlavi contracts though is there the mention of guarantors for administering the wife’s alimony upon separation. Both of them, along with the Bactrian, state the dowry of the bride but in the last one, our control specimen, it is tersely noted in an addition after the final protocols, with no special conditions attached to the items. But in the Sogdian and Pahlavi texts, the dowry question looms prominently in the *narratio*, exposition and *dispositio*, the declaration of purpose, and falls within the ambit of penalties unlike the Bactrian, Gandhari or Old Tibetan ones. Only in the Sogdian texts, both the contract and the bride’s copy, is a *quid pro quo* noted in that either spouse is free to choose a future partner of their choice; and also that no future compensation is outstanding upon cessation of the union.

No such choice is included in the Bactrian, Gandhari, Pahlavi or Old Tibetan penalties. In the Sogdian and the Pahlavi ones we may point out the presence of a guarantor appointed by the bride or her family for the collection of the said payment. Only in the Sogdian text(s), is there an additional penalty incurred by the groom to the amount of an interest of two for every ten of the approved one hundred *dirhāms* upon failure to release the bride with her dowry. Only in the Zoroastrian model is there the explicit mention of the groom returning the collateral, a pre-determined amount of earnings from his property pledged in lieu of the original dowry and that he shall not “delay it nor be obstinate about it” *spōz-iz ud wastārīh nē kunom*.²⁴ Only the Gandhari divorce contract contains both physical and economic penalties expressed in terms of 110 strokes and a fine in the form of a four-year-old foal. The reason adduced for the strokes is lest anyone in future “attempt to complain against the hand-written letters or stir up a dispute constantly” *yo icheyamti paca kalammi eda hasta-lekhṃṣu garahna yati va taha (ka)raaya’e (mo)ha cotamma aprammaṃna siyamti*.²⁵ Besides the Gandhari contract, this rejoinder warning accompanying the penalty tends to run through all the texts except in the Sogdian one. The sentiment is expressed albeit varyingly in Bactrian, “our claim and argument shall be [inv] alid” οισαρο νοοοοοοο αβουδηιο; in Pahlavi “and did not dispute further” *pad freh nē pahikard*; and in Old Tibetan “should never be disputed nor interfered with” *nam du yang myi gleng myi dug*.²⁶

23 TAKEUCHI 1995, p. 163.

24 MACUCH 2007, p. 191.

25 LIN 1990, p. 285.

26 SIMS-WILLIAMS 2000 [2001], pp. 34–35; MACUCH 2007, pp. 186, 191; TAKEUCHI 1995, pp. 162–163.

Dispute settlements

The six Bactrian dated documents delineate precisely herein the penalties to be borne by the concerned parties. This period represents, I contend, the apogee of Bactrian chancery practice. We are dealing here with a honed scribal tradition, thoroughly cognisant of administrative formularies, conventions and protocols, now for well-nigh three centuries, in the service of professionally administered principalities.

Despite some variation in penalty sums and the individuality of each case, the levies now aid the economic historian in discussing whether the time at which the contract was validated, was a period of either local, socio-political stability or upheaval. The imposed fines range from one thousand gold *dinārs* in DOC N (AD 629), 500 *dirhāms* in DOCs R (AD 674) and Uu (AD 722), and 200 *dirhāms* in DOC S (AD 692) to fifty *dinārs* in DOC O (AD 662). *Dinārs*, Bactrian διναρο, appear to be in circulation up to and for sometime after the collapse of the Sasanians. In later documents, following repeated Arab incursions from Khurasan, we encounter *dirhāms*, Bactrian δραξιμο. But *dinārs* are attested again, on the eve of the 'Abbasids, in DOC X (AD 749). The parity in two-fold payment is again uniformly evident, that is to say, towards the local administration and the concerned opposite by the party being punished. In DOCs N and O the levy is to be deposited in the treasuries of local officials, both of which are specifically stated, namely, that of "the *khars* of Rob" (DOC 26 N) and "ser of Gozagan" (DOC O). In DOC X the promulgator is summoned to pay at the treasury of an official termed a βρηδαγανο; and while there is no official body or place-name cited in DOC R, in both DOCs S and Uu, the sums are to be deposited in the "judicial treasury" γαζανο λαδοβαραγγο. In DOCs N, O and R the solemn declarative is made commencing with the promulgator referring to himself by the 1st sg. nominal αζο plus family members, present and future, who are legally bound not to question or contend the issue. The pattern, however, varies: in DOCs N, O and R, "brothers" are recorded; in DOC N and O, "sons"; in DOCs N, R and Uu "descendants" are cited whereas in DOC R "children" are also mentioned alongside "descendants". In DOC S responsibility is collectively acknowledged by the 1st pl. pronoun μαχο without any reiteration. Insofar as damages are due to the party, here too there is a pattern although an inconsistent one: in DOC N payment is to be made to the principal claimant plus "brothers, sons and descendants"; in DOC R three named claimants and their "brothers, children and descendants"; in DOC Uu the main party named and his "brothers and children". Only in DOC O is just one particular individual named and in DOC S simply "the opposite party". In DOCs R, S and Uu the penalty sum is denoted by the phraseology "dirhams of Kawad" δραξιμο Κοοαδο (DOC S), and spelt as Κοαδο (DOC Uu), and Κοοοαδο (DOC R). In all three instances the customarily expected title of "king" βαο is not prefixed to the name. In all of the penalty clauses, a concluding desiderative is invoked: in DOCs N and

R it is practically identical and in both it runs as “after the fine has been paid, may (this) guarantee-contract, this sealed document be (considered) good and valid” (DOC N). For “guarantee-contract” we have “contract of undertaking” in DOC R where the expression “good and valid” is evident as in DOC X, $\chi\omicron\zeta\omicron$ $\omicron\delta\omicron \omicron\alpha\omicron\alpha\omicron\omicron$, orthographically $\omicron\alpha\omicron\alpha\omicron\omicron$ in DOCs N and R.²⁷ In DOCs S and Uu we observe “valid and authoritative” and “authoritative” respectively. DOC X is at pains to highlight that upon payment of the fine – phrasing similar to that of DOCs N and R – the settlement deed is “good (and) potent (and) authoritative”. The duplicate copy, however, has just “authoritative”.²⁸ This desire to uphold the validity of the document is also apparent in Gandhari DOC 345 wherein, upon “having paid all this penalty” to a *[ra]yakammi* “royal funds”, a feature shared in our Bactrian control text, “without doubt it shall continue as written above” *damda daditva avaše ca eva eta bhaveyati yatha upari lihita*.²⁹ The penalty, incidentally, consists of thirty lengths of cloth. There is no mention of legal tender nor a clause indicating additional payments to either claimants in both the Gandhari contracts and the single Khotanese one. One Khotanese sample, 318 SI P 103.49, does mention a compensatory sum of 2,200 *mūrās*. But what is odd is that the debtor in this complicated transaction is now legally obliged to pay only ten *mūrās* as interest over and above a “gift” against the original payment of grain, a house and an unidentified item. Both Khotanese contracts do somewhat parallel our Bactrian one by recording “becomes authoritative” *pramām hämi khu hä* (318 SI P 103.49) and “it becomes authoritative” *prramām [hi]mi khu hä* (365 SI M 25) but only after a seal-mark.³⁰ No penalties are enumerated in Gandhari DOC 436.

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27 SIMS-WILLIAMS 2000 [2001] pp. 79, 93.

28 *Ibid.*, p. 140.

29 BOYER et al. 1920, p. 125.

30 EMMERICK/VOROB'ĖVA-DESJATOVSKAJA 1993, pp. 156, 217.

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