

Buddhist Litigants in Public Court: A Case Study of Legal Practices in Tibetan-ruled Dunhuang (786–848)

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This article examines a legal dispute over the ownership of nine bondservants between a Buddhist monastery and two monks and a nun, focusing on the legal apparatus and practices in Dunhuang when it was under Tibetan control (786–848). During the Tang, eminent monks of the Buddhist clergy petitioned for exemptions from public courts in order to restrict trials of ordained Buddhists at alternative venues. Such petitions were declined, granted, or revoked by different Tang emperors. This case study demonstrates that ordained Buddhists on this Sino-Tibetan frontier affiliated with the Buddhist clergy in Dunhuang did not enjoy this privilege. Instead of being shielded from public attention, two Buddhist monks and a nun successfully litigated against a Buddhist monastery in a public court.

INTRODUCTION

Conflicting claims to jurisprudence over clerical legal cases were a central battlefield in the interaction between the Buddhist clergy and the state. Buddhist canon law (*Vinaya*) of the Mūlasarvāstivāda tradition, circulated in both China and Tibet, discouraged ordained Buddhists from litigating in public court when they were victims in legal disputes with lay people. The *Buddhist Canon Law on Miscellaneous Matters (Vinayakṣudrakavastu)* of the Mūlasarvāstivāda tradition records a story in which an ordained Buddhist monk¹ took the thief who had stolen his robe to the court of the king, which was literally expressed as “the palace of the king” (Tib. *rgyal po’i pho brang*; Ch. *wangjia* 王家).² When this was reported to the Buddha, the Buddha established a rule to prohibit monks from taking thieves to the king’s court. Instead, the Buddha urged monks to retrieve their stolen possessions by

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1. In this article, the word “monk” is used to refer to a fully ordained monk (*dge slong*), “nun” to a fully ordained Buddhist nun (*dge slong ma*), and “venerable” for an ordained Buddhist whose particular status is not specified (*ban de*). The phrase “ordained Buddhists” include all Buddhists who are novice monks and nuns, probationary nuns, and fully ordained monks and nuns.

2. This story is discussed in Schopen, “The Good Monk and His Money,” 93–94. For the Chinese and Tibetan translation of this story, see *Genben shuoyiqieyou bu pinaiye zashi* 根本說一切有部毘奈耶雜事 T1451: 285c4–c10 and ‘*Dul ba phran tshigs kyi gzhi*, in *Bka’ ’gyur* (Dpe bsdur ma), vol. 10, Tha, 574–75. In the present article I have only consulted this and the following cases in the Chinese translation of the Buddhist canon law of the Mūlasarvāstivāda and the Tibetan translation of the Buddhist canon law. A comprehensive examination of these cases in Buddhist canon law of all available traditions remains the subject of a separate study.

preaching to the thief to persuade him to voluntarily return the stolen items, by paying the thief the price of the stolen items or half of it. Another story in the *Explanation on Buddhist Canon Law for Nuns (Bhikṣuṇīvinayavibhaṅga)* indicates that an ordained Buddhist nun was also attempting to litigate in the king's court. This story appears in the section discussing the eleventh of the thirteen rules (*saṃghāvaśeṣa*) whose infraction require penance and/or probation. In this story, nun Sthūlananda obtained some promissory notes from a wealthy lay householder. When the householder died, she went to collect the debt from the debtor and threatened to take him to the king's court if he refused to repay the debt. When this dispute was reported to the Buddha, the Buddha promulgated a rule prohibiting nuns from taking debtors to the king's court.³ The resolution alluded to seems to be that clerical legal matters should be handled in an alternative venue other than the king's court.

The same Buddhist canon law of the Mūlasarvāstivāda tradition also indicated that ordained Buddhists who had offended the law of lay society were expected to be interrogated within the monastic community. A case concerning stealing was found in the section discussing the second of the four grave transgressions (*pārājika*) on taking what is not given.⁴ The offender *Dānika was a Buddhist monk who used to be a potter before entering the Order.⁵ He was charged with stealing King Ajātaśatru's timber to build his monastic cell. When the city guard brought him to the King's court, the king summoned the monk to a private meeting. During this meeting with the king, the monk defended himself by saying that he did not steal because he took the timber with the king's permission. The king could not remember giving such permission and asked the monk to explain. The monk then reminded the king that on the day of his enthronement, he had declared that Buddhists and Brahmans could freely use any trees, flowers, or water in his kingdom as needed. The king then clarified that he only meant to allow them to freely use trees, flowers, and water without owners. Upon hearing this clarification, the monk commented sarcastically, "If you were referring to those not owned by anyone, what's the point of your permission?" The king was outraged by this comment and said: "Monk, you deserve to be killed today. But I can't kill. You'd better leave as quickly as possible." Some monks reported this case to the Buddha. Before interrogating monk Dānika, the Buddha asked his disciple, the Venerable Ānanda, to find out what kind of stealing would lead to the death penalty in this kingdom. Ānanda spoke to various people in different public places and was told that the law in that kingdom would impose the death penalty on one who had stolen five Māṣas of goods.⁶ After this was reported to the Buddha, the Buddha then summoned all the monks and interrogated Dānika in front of them. The interrogation began with a verification of Dānika's identify and a confirmation of what he had done. The Buddha then scolded monk Dānika and laid down rules prohibiting monks from taking

3. This story is discussed in Schopen, "The Good Monk and His Money," 93–94. For the Tibetan translation of this story, see *Dge slong ma'i 'dul ba rnam par 'byed pa*, in *Bka' 'gyur* (Dpe bsdur ma), Ta, vol. 9, pp. 296–99; for the Chinese translation of this story, see *Genben shuoyiqieyou bu biqiuni pinaiye* 根本說一切有部苾芻尼毘奈耶 T1443: 936b3–936c5. Note that the nun's threat to go to the king's court is only found in the Tibetan translation of this story (*Bka' 'gyur*, Dpe bsdur ma, vol. 9, p. 298).

4. For the Tibetan translation of this story, see '*Dul ba rnam par 'byed pa*, in *Bka' 'gyur* (Dpe bsdur ma), Ca, vol. 5, 102–17; for the Chinese translation, see *Genben shuoyiqieyou pinaiye* 根本說一切有部毘奈耶 T1442: 635c23–637b22. Similar versions of this story are also found in *Mohe sengzhi lu* 摩訶僧祇律 T1425238a26–239b14. The case used to introduce this rule against taking what is not given was slightly different in Buddhist canon law of other traditions.

5. The Sanskrit name of the monk is tentatively reconstructed from its Chinese transliteration. The monk's name was spelled Dannijia 但尼迦 in the *Mūlasarvāstivāda vinaya*, Danijia 達膩伽 in the *Mahāsāṃghikavinaya*, and in Tibetan as Sngon rdza mkhan Dge slong Nor can, "Monk Nor can, who was a former potter."

6. Olivelle (*King, Governance, and Law*, 459) defines Māṣa (lit., a bean) as "a measurement of weight, approximately 0.59 gm."

what is not given in the future. What happened to monk Dānika later is not specified in the text. It is likely that he would not receive any punishment by the monastic community since his offence predated the establishment of the rule against stealing. This case also indicates a perception that open prosecution of ordained Buddhists should be avoided. Although King Ajātaśatru questioned monk Dānika, he did so in a private meeting and ordered specifically that the guard who had discovered Dānika's crime and brought the latter to see him should not be brought in. Besides stating that he could not kill, the king forbore from imposing any other punishment on the convicted monk.

Another case introduced later in the section on the same rule against taking what is not given illustrates what could happen to an ordained Buddhist monk offender.⁷ The alleged offender in this case was the Venerable Mahāmaudgalyāyana, who used magic to rescue Anāthapiṇḍada's son from the bandit kidnappers. Monks in the group of six accused Mahāmaudgalyāyana of taking the kidnapped child by force and of terrifying the kidnappers. They requested Mahāmaudgalyāyana to confess but the latter refused. These monks then requested an ecclesiastical proceeding (Ch. *shezhi jiemo* 捨置羯磨; Tib. *Gnas las dbyung ba'i las*) to confront the unrepentant Mahāmaudgalyāyana.⁸ This ecclesiastical proceeding was evidently not held; instead, it was suggested that they present the case to the Buddha for a judgment.

The cases discussed above may not necessarily represent how offences committed by ordained Buddhists were actually handled in legal practices in India; what they do illustrate is an Indic conceptualization of a venue within the Buddhist clergy where transgressions of its ordained members could be investigated. In their perception of their relationship with the state, Buddhists in Tang China seem to have shared a similar approach toward the jurisdiction of ordained Buddhists. Just as the state tried to have ordained Buddhist offenders investigated in public courts under the laws of the state, eminent monks in Tang China tried to restrict investigations of these transgressions to alternative venues other than the courts of the state.⁹ Members of the Buddhist clergy insisted that for offences that required a lay offender to be interrogated in the public court, monastic offenders should not be interrogated in this state-operated court. Traditional literati and officials of Tang China, however, believed that this lack of adherence to state laws and courts threatened the foundation of the Tang society.¹⁰ This competition for jurisdiction over the Buddhist clergy shows that the relationship between religion and the state in China between the seventh and early eleventh centuries cannot be fully understood without considering the legal aspects of their interaction.

PELLIOT TIBÉTAINE 1079

An examination of how clerical cases were actually handled in legal practices in Tang China is now made possible by the discovery of the archival records of legal cases from Dunhuang, an oasis town on the Sino-Tibetan border. Unveiling the legal procedures used to handle these clerical cases will provide invaluable insight for advancing our understanding

7. For the story, see *Genben shuoyiqieyou bu pinaiye* T1442: 649b13–650; 'Dul ba rnam par 'byed pa, in *Bka'* 'gyur (Dpe bsdur ma), Ca, vol. 5, 102–17.

8. For a list of seven ecclesiastical proceedings, see Buswell and Lopez, *Princeton Dictionary of Buddhism*, 420–21.

9. For instance, Xuanwan 玄琬 (562–636) submitted a memorial to Taizong 太宗 (Li Shimin 李世民 [598–649]) in 636, arguing that ordained Buddhist monks who had committed offences should not be treated the way lay offenders would be treated. Instead, they should be sent to their jurisdiction to be tried in accordance with the law for ordained Buddhist monks (*sengli* 僧律). For this memorial see Zu Xiu 祖琇 *Longxing bianmian tonglun* 隆興編年通論, juan 11, X1121:0163c16–c20.

10. See Weinstein, *Buddhism under the T'ang*, 1.

of how agreements negotiated between the Buddhist clergy and the state were enacted in legal practice in Tang China from the seventh to the early eleventh century. The ruling power of Dunhuang had shifted from the Tang to the Tibetans in 786 and then back to the Tang represented by the Return to Righteousness Army (Guiyi jun 歸義軍) in 848. This article examines a legal dispute between a Buddhist monastery and three ordained Buddhists over the ownership of nine bondservants (*bran*) in order to understand how legal cases involving ordained Buddhists were handled in Dunhuang while it was under Tibetan control (786–848).¹¹ When combined with future studies on the handling of legal cases dated before and after the period of Tibetan control, findings in this article will contribute to a better understanding of how changes in governance in Dunhuang influenced the legal interaction between the Buddhist clergy and the state.

The legal dispute in question was recorded in Pelliot tibétain 1079,¹² a Tibetan manuscript that was discovered in the Mogao cave library in Dunhuang and is now preserved in the Bibliothèque nationale de France in Paris (see Fig. 2 below). The manuscript is 28 centimeters wide and 29 centimeters long, and contains a total of twenty-three lines written in a headed official style.¹³ It is sealed with twenty-seven vermillion stamps. Lalou first catalogued this manuscript as Pelliot tibétain 1079 in the Pelliot tibétain Collection from Dunhuang and identified it as an official document that contained the names of many renowned religious and lay individuals of Dunhuang.¹⁴ Some of these names could be recognized from the seals stamped at the end of the manuscript. Because a few Chinese characters were written on the back of the manuscript, it was also catalogued as Pelliot chinois 3522.¹⁵ In 1983 Wang Yao 王堯 and Chen Jian 陳踐 translated it into Chinese.¹⁶ In 1991 Hugh Richardson published his transliteration and translation of Pelliot tibétain 1079 in the *Journal of the Royal Asiatic Society*.¹⁷ A summary of the case in this manuscript has also recently appeared in Brandon Dotson's survey of Tibetan legal cases.¹⁸ This foundational scholarship on Pelliot tibétain 1079 has facilitated research on various aspects of the social and religious history of Dunhuang.¹⁹

The present article aims to understand a few key issues: when members of the Buddhist clergy broke the law or had legal dispute, where and how would their cases be tried? Would they be resolved at alternative venues under the influence of the Buddhist clergy? Or would they be tried in the public court regardless of their religious status? What about litigation of legal cases involving members of the Buddhist clergy in Tibetan-ruled Dunhuang? When

11. Terms such as *bran mo* (line 1) and *bran* (line 11, 18), *bran bu mo* (line 12), *bran ma* (line 18) are used throughout Pelliot tibétain 1079. Tibetan and Chinese manuscripts from Dunhuang reveal that these individuals, translated here as “bondservants,” could be sold, bought, or transferred between owners. In Chinese manuscripts from Dunhuang, they are described as *nu* 奴 or *nubi* 奴婢, which Wallace Johnson renders as “slave” in his translation of the *Tang Code*. For a list of occurrences of the term “slave” in the *Tang Code* see Johnson, *Tang Code*, 589–90. For a study on monastic ownership of servants or slaves in Buddhist canon law, see Schopen, “The Monastic Ownership of Servants or Slaves.”

12. The manuscript can only be dated to one of four Sheep years: 791, 803, 815, or 827.

13. Van Schaik (“Dating Early Tibetan Manuscripts,” 123–24) discusses four different styles of Tibetan writing: square style, Sutra style, official style (headed and headless), and Monastic style. Pelliot tibétain 1079 is written in a style that is closest to the headed official style.

14. Lalou, *Inventaire des manuscrits tibétains de Touen-Houang*, 54; van Schaik and Galambos (*Manuscripts and Travellers*, 19) incorrectly identified Pelliot tibétain 1079 as a personal letter to monk Hongbian.

15. See *Catalogue des manuscrits chinois de Touen-houang*, 17.

16. Wang and Chen, *Dunhuang Tufan wenxian xuan*, 46–48.

17. Richardson, “An Early Judicial Document from Tibet.”

18. Dotson, “Introducing Early Tibetan Law,” 302–4. I thank the author for kindly sharing his unpublished summary of this case with me in 2014.

19. For earlier scholarship on the Pelliot tibétain 1079 manuscript, see Shen Guomei and Li Defan, *Yingcang Facang Dunhuang yishu yanjiu anhao suoyin*, 3201–2.

Dunhuang was under Tibetan control, what legal codes, procedures, and languages were used to investigate legal cases that involved litigants, judges, and witnesses from multiple linguistic and legal backgrounds? Was the case decided in accordance with the Tang or the Tibetan legal system? Did Tang law continue to exert influence on Tibetan-ruled Dunhuang?

For this analysis, I have chosen the legal dispute in Pelliot tibétain 1079 as a case study because both litigants were affiliated with the Buddhist clergy. I will first examine the legal system in Dunhuang in the context of the larger Tibetan administrative structure. Then I will introduce the legal dispute in Pelliot tibétain 1079 in detail. Last, I will discuss the significance of Pelliot tibétain 1079 for our understanding of legal practices in Tibetan-ruled Dunhuang.

THE LEGAL SYSTEM IN DUNHUANG

Even decades after Dunhuang came under Tibetan control, some Tang intellectuals continued to consider it part of the Tang imperial administrative structure. This was clearly conveyed in *Yuanhe junxian tuzhi* 元和郡縣圖志, a Tang collection of maps and gazetteers of commanderies (*jun* 郡) and districts (*xian* 縣) of the Yuanhe Period (806–814), which Li Jifu 李吉甫 (758–814) completed in 813.²⁰ In this work²¹ Li claimed that Shazhou 沙州 Prefecture (*fu* 府) belonged to the Longyou 隴右 Circuit (*dao* 道);²² it administered two districts, Dunhuang 敦煌 and Shouchang 壽昌, and thirteen towns (*xiang* 鄉).²³ In other words, the inhabitants of Dunhuang were perceived to be under the jurisdiction of the Dunhuang District of Shazhou Prefecture in the Longyou Circuit.

The system in operation at Dunhuang during Tibetan occupation, as shown in Pelliot tibétain 1079 and other manuscripts from Dunhuang, was quite different from what Li had described in 813. The legal dispute in Pelliot tibétain 1079 was submitted to and investigated by officials present at an assembly of the *Khrom* of Kwa cu (Guazhou 瓜州) held by the Bde blon of the *Bde khams*. What was the *Bde khams*? What was the *Khrom*? Who was the *Bde blon*? And where was Dunhuang positioned within this system? More generally, what were the legal procedures for investigating disputes in the greater Dunhuang region? What is clear, as I will demonstrate, is that the Tibetans had reorganized the inhabitants of Dunhuang in a way completely different from their organization under the previous Tang imperial administrative system. Therefore, before discussing the significance of the Pelliot tibétain 1079 legal case in advancing our understanding of legal practice in Dunhuang, a few key terms should be clarified to enable us to contextualize Dunhuang within the Tibetan administrative hierarchy.

Unfortunately, there is no consensus regarding the geographical territories of the *Bde khams*,²⁴ which I translate here as “the Province of *Bde khams*.” What we do know is that the

20. See Hucker, *A Dictionary of Official Titles in Imperial China*, 201. Unless otherwise stated, all translations of Chinese terms for administrative units and titles in this article are from this work.

21. For the original text, see Li Jifu, *Yuanhe junxian tuzhi*, 1025–27. Compare Li’s depiction of Shazhou with a geographical account of Sha cu in the Dunhuang manuscripts analyzed by Ikeda On, “Sashū zukei ryakkō.”

22. According to Hucker (*Dictionary*, 487), from the early Tang in 706 a circuit was “a province-size area supervised by a commissioner (*shi* 使) specially delegated from the central government,” each serving as a coordinating intermediary between a cluster of prefectures (*zhou* 州; *fu* 府) and the capital.

23. According to Hucker (*Dictionary*, 231), *xiang* 鄉 in the Tang was a township, “a sub-district group of relatively self-governing families, subdivided in villages.” Jin listed the following thirteen towns under the jurisdiction of Sha cu Prefecture before it came under Tibetan control: Dunhuang 敦煌, Mogao 莫高, Shensha 神沙, Longle 龍勒, Pingkang 平康, Yuguan 玉關, Xiaogu 效谷, Hongchi 洪池, Xuanquan 懸泉, Zihui 茲惠, Hongrun 洪潤, Shouchang 壽昌, and Conghua 從化. See Jin Yingkun, “Tufan tongzhi shiqi de buluoshi kao.”

24. Li Fang-Kuei (“Notes on sTag sgra klu khung,” 177) suggests that the Tibetan term *Bde khams* corresponds to “An-lo,” a Chinese name for the special district in Ling-Chou established for the refugee ‘A zha ruler and his clan, which literally meant “peaceful and happy.”

Old Tibetan Chronicle in Pelliot tibétain 1287 recorded that a new “Great Province of the Chief Official of the *Bde khams*” was established during the reign of the Tibetan king Khri srong lde btsan (742–797).²⁵ Moreover, Pelliot tibétain 113 also mentioned that a “grand Zhang minister” (*Zhang lon chen pho*) sent orders from Long cu 隴州 to several *Bde blon*. These references clearly indicate the existence of multiple *Bde khams* provinces in the Tibetan empire.²⁶

The chief official of the province of *Bde khams* appeared in Tibetan manuscripts as *Bde blon*, which I have translated as “chief provincial official” here. Pelliot tibétain 113 indicates that there was more than one chief provincial official in the Tibetan empire.²⁷ The Chief Provincial Official of the *Bde khams* presumably reported to the court in central Tibet and administrated several *khrom*.

Another challenge is how to interpret *khrom*. While some scholars have translated *khrom* as “garrison,”²⁸ I have here adopted Uray’s translation as “military government” because “garrison” is also used to translate other Tang administrative units.²⁹ Uray explicitly points out that the territorial units of the *khrom* designated in the seventh to ninth centuries “cannot be treated as equivalents of the so-called prefectures, the 州 *chou*, of contemporary China.”³⁰ Uray further argues that a *khrom* was larger than a Chinese prefecture, in that the territory of a *khrom* could extend over several prefectures. Examining Tibetan historical writings and manuscripts from Dunhuang, Uray identifies references to several military governments from the seventh to ninth centuries.³¹ One was the Kwa cu Military Government, administered by a military head (*Dmag dpon*).³²

25. The Tibetan phrase for “Great Province of the Chief Official of the *Bde khams*” is *Bde blon khams chen po*, which was translated as “plusieurs territoires un nouveau gouverneur de haut rang” in Bacot, Thomas, and Toussaint, *Documents de Touen-Houang relatifs à l’histoire du Tibet*, 154. For a complete transliteration and translation of Pelliot tibétain 1287, see *ibid.* For a recent study on Pelliot tibétain 1287, see Dotson, “Sources for the Old Tibetan Chronicle.”

26. Lin Guanqun and Huang Weizhong concur that there were multiple provinces of *Bde khams* in the Tibetan empire, but they disagree on the inner structure of the *Bde khams*. Lin argues that the Tibetan empire consisted of three areas: the region in central Tibet divided into four horns (*ru bzhi*), the *Mdo khams* region in northeastern Tibet, and the *Bde khams* region established during Tibet’s territorial expansion. In this scheme there were five *Bde khams*, located in the east, south, north, west, and Qinghai. The northern *Bde khams* governed the Mkhars btsan Military Government and the Kwa cu Military Government. See Lin Guanqun, “Tangdai Tufan junzhi zhanlingqu jianzhi zhi yanjiu,” 16. It is noteworthy that, as Lin has already pointed out, *Bde khams* was different from *Mdo khams* because the chief official of *Mdo khams* was referred to in Tibetan Dunhuang manuscripts as a *Dbang po*, while that of the *Bde khams* was a *Bde blon*. See *ibid.*, 6. Huang Weizhong contests Lin on the territories of *Bde khams* and argues that the Tibetan empire consisted of only two areas: central Tibet and the border regions known as *Bde blon khams chen po*. In Huang’s scheme *Mdo khams* was no longer a separate region, but the central part of the five districts in the *Bde blon khams chen po*. One of Huang’s central pieces of evidence for this argument is that Pelliot tibétain 16 describes “*Mdo khams*” as “the central great Khams” (*dbus kyl khams chen po*). Huang therefore argues that the Qinghai *Bde khams* in Lin’s scheme should be replaced by the central *Bde khams* so that it conforms better to the scheme of five *Bde khams* associated with cardinal directions. See Huang Weizhong, “Guanyu Tangdai Tufan junzhi zhanlingqu jianzhi de jige wenti.” The cartographer Karl Ryavec concurs with Lin on this matter. On Map 11 in his *Historical Atlas of Tibet* (pp. 44–45), Ryavec depicts *Bde khams* as a region at the same level of *Mdo khams* and *Mdo smad*.

27. Based on Pelliot tibétain 1287, Lin argued that *Bde blon* was established during the reign of king Khri srong lde btsan to replace the former minister of the border regions (*so blon*). See Lin, “Tangdai Tufan junzhi zhanlingqu jianzhi zhi yanjiu,” 6.

28. See, e.g., Ryavec, *Atlas*, 44–45.

29. For instance, Hucker (*Dictionary*, 201) translates Tang *junfu* 軍府 as “garrison.”

30. Uray, “Khrom,” 310.

31. These include the Rma grom Military Government along the Yellow River, the Dbyar mo thang Military Government located to the east or northeast of Qinghai Lake, the Mkhars tsan (Liangzhou 涼州) Military Government, the Kwa Cu (Guazhou 瓜州) Military Government, the Tshal byi Military Government in the Lop Nor Region, the Khotan Military Government, and the Bru sha Military Government. Ryavec (*Atlas*, 44–45) labels these eight military governments “garrisons” on his map.

32. Uray (“Khrom,” 311) concurs with Lalou and further points out that the military head was, without doubt, the chief official of the Kwa cu Military Government.

The Kwa cu Military Government oversaw at least the following three prefectures: Kwa cu, Sug cu (Suzhou 肅州), and Sha cu. Citing a reference in Pelliot tibétain 1088 that mentions one assembly of the Kwa cu Military Government held in Sug cu in a Rabbit year, Uray (p. 310) has argued that the Kwa cu Military Government controlled at least the above-mentioned Kwa cu and Sug cu. Relying on a passage in Pelliot tibétain 1089 where the prefect (*Rtse rje*, for which see below) of Sha cu is said to have submitted information on ranks to the Military Head and Inspector (*Spyan*) of Kwa cu, Lalou claims that Sha cu was also subordinate to the Military Head of the Kwa cu Prefecture.³³ The fact that officials from the regions between Sha cu and Sug cu attended this assembly, as recorded in Pelliot tibétain 1079, affirms the extent of geographical territories of the Kwa cu Military Government outlined by Lalou and Uray.

Dunhuang was apparently under the jurisdiction of the Sha cu Prefecture. The chief official at Sha cu appeared to be *Rtse rje*, a title Uray (pp. 311–12) interprets as “town prefect and councilor” or “town prefect holding the rank of a councilor.” For this article I translate *Rtse rje* as “prefect,”³⁴ an official title that was the equivalent of the head of a prefecture during the Tang. Demiéville has argued that the Prefect of Sha cu was inferior to Kwa cu’s capital liaison representative (*liuhou shi* 留後使),³⁵ a temporary deputy who took care of affairs of a military commissioner (*jiedu shi* 節度使) while the post was vacant.

The early Prefect of Sha cu seems to have been appointed by the central government in Tibet. A fragmentary Tibetan manuscript recorded a dispatch issued from the ‘Ong cang do Palace at the request of the Prefect of Sha cu.³⁶ According to that prefect, his predecessor was apparently appointed by the central government of Tibet to oversee the newly occupied territory, but was killed by the inhabitants of Sha cu seven years later. By the time the dispatch was issued, the prefect who succeeded him had maintained peace in Sha cu for over ten years.

Apart from Sha cu, records on Tibetan bamboo slips reveal that prefects were also appointed elsewhere in the Great Lop Nor, Khotan, and Shanshan.³⁷ These prefects performed a wide range of duties, including setting deadlines for the submission of tax on wheat,³⁸ reviewing requests to reimburse expenses spent on copying Buddhist scriptures,³⁹ and taking care of military affairs.⁴⁰

33. Lalou, “Revendications des fonctionnaires du Grand Tibet au VIIIe siècle,” 199.

34. In contrast, Richardson renders the term *Rtse rje* as “governor” in his translation of Pelliot Tibétain 1079. See “The Province of the Bde-blon of the Tibetan Empire, Eighth to Ninth Centuries,” 184. For further discussion of the term *Rtse rje* and its Chinese counterpart *jie’er* 節兒, see, e.g., Wang Yao, “Tufan guanyuan jie’er kao,” 23–28.

35. See Demiéville, *Le concile de Lhasa*, 264. Hucker (*Dictionary*, 317) translates this title as “capital liaison representative” and explains that during the Tang he was “an agent in the dynastic capital charged with maintaining communication between the central government and his superior in a territorial base, such as a Prince or Military Commissioner” (*jiedu shi*).

36. For this manuscript, see Fr. 80 (730, vol. lxxiii, fol. 37) in Thomas, “Tibetan Documents from Chinese Turkestan, II,” 814–16.

37. Wang Yao (“Tufan guanyuan jie’er kao,” 27) notes that a number of Tibetan bamboo slips also mention Prefects of the Great Lop Nor, Khotan, and Shanshan. For complete transcriptions of these bamboo slips naming the prefects of those regions, see Wang and Chen, *Tufan jian du zong lu*, entries 240, 350, 359, 380, 386, 387, 393, 395, 401.

38. IOL Tib J 844 recorded that the prefect, probably of Sha cu, ordered that an individual from the *Rgod sar gyi sde* must submit a certain amount of wheat in a Pig year. For a study of this manuscript, see Thomas, “Documents, II,” 809–10.

39. Thomas (“Documents, II,” 832–39) analyzes a manuscript (Vol. lvi, foll. 73–4) that recorded that an elder monk (*Gnas brtan*) of Sha cu petitioned the Buddhist Controller (*Mkhan po*)—the highest monastic official of Dunhuang during the Tibetan occupation—Lhun grub and the prefect for reimbursement of expenses spent on copying Buddhist scriptures. The terms “elder monk” and “Buddhist Controller” will be discussed below.

40. Bamboo slips entries 328 and 332 in Wang and Chen (*Tufan jian du zong lu*) from Mirān show that the Prefect of the Great Lop Nor Region received and issued military orders. For a translation of the bamboo slips, see pp. 63, 64. For a transcription of the bamboo slip, see *ibid.*, entry 328, II 449, M.I. x, 3; entry 332, II 451, M.I. x, 2.

One major duty of these prefects was to hear, investigate, and make judicial decisions on legal complaints. The Tibetan manuscript Or. 15000/490 discovered in Mirān records that on the new moon day in the first spring month of a Snake year, Prefect Minister (*blon*) Ju cu[*g*] and Zhang Minister (*blon*) Skyang po dpye rma received a complaint about bodily injury from two plaintiffs from the Little Lop Nor region.⁴¹ Another Tibetan manuscript, Or. 15000/530 discovered in Mirān, also records that in a Pig or Sheep year,⁴² Minister (*blon*) Stag sgra, Prefect Minister (*blon*) Stag stag rtsan, two other ministers (*blon*), and a number of other individuals without official titles investigated a complaint between a venerable (*ban de*) ordained Buddhist and a layperson concerning the sale of a male bondservant.⁴³ The prefect's participation in judicial trials was also affirmed in another Tibetan bamboo slip discovered from Mirān, which records that two prefects verified facts presented in the trial of a legal dispute.⁴⁴ The Chinese Dunhuang manuscript S. 5816 also shows that a prefect (*jie'er* 節兒) made judicial decisions about legal disputes between two individuals whose quarrel escalated to bodily violence on the nineteenth day of the eighth month in a Tiger year (either 822 or 834).⁴⁵

When Dunhuang was under Tibetan control, its inhabitants were further divided into at least three major groups: the Military Division (Tib. *rgod gyi sde*; Ch. *xingren buluo* 行人部落), the Civil Division (Tib. *dar pa'i sde*; Ch. *simian buluo* 絲綿部落), and the Religious Division of Buddhist Monks and Nuns (Tib. *lha ris*; Ch. *sengni buluo* 僧尼部落).⁴⁶ Kazushi Iwao argues that the military division consisted of three subdivisions: Upper (Tib. *Stong sar*; Ch. *shang* 上), Lower (Tib. *rgod sar*; Ch. *xia* 下), and Central (Tib. *snying tshoms*; Ch. *zhongyuan* 中元) Divisions.⁴⁷

The Military, Civil, and Religious Divisions were not established at the same time. Kazushi Iwao argues that after Dunhuang fell under Tibetan control, its inhabitants were first registered in the Civil Division before the Military Division was established (Iwao, "Organisation," 71). Later, some inhabitants of the Civil Division were selected and re-registered in the Military Division. By the year 788 the Religious Division of Buddhist Monks and Nuns was already separated from the Military and Civil Divisions.⁴⁸ Fujieda argues that toward

41. This manuscript is validated with eight round vermilion seals at the end. For a detailed study, see Thomas, "Tibetan Documents from Chinese Turkestan, III," 581–84. Note that Thomas wrote the place name Lop Nor as Nob.

42. The name of the year was only partially preserved with a final consonant -*g*, which could be either Pig (*phag*) or Sheep (*lug*).

43. These officials and individuals were said to have stamped their seals on the manuscript. On the bottom of the manuscript twelve vermilion seals are still legible. After he was sold, the male bondservant Phu tsab had some legal trouble and ran back to the venerable (*ban de*) who originally owned him. Having inquired about the legal trouble, the details of which were not elaborated in the manuscript, the venerable decided to compensate the layman who had bought the bondservant. The back of the manuscript has a line that Thomas translates as "attestation mark of Phu tsab (*Phu tsab gyi dpang rgya*)," the male bondservant. For more information on this manuscript, see Thomas, "Documents, III," 576–78.

44. For a transcription of the bamboo slip, see Wang and Chen, *Tufan jian du zong lu*, entry 350, II 406–2, M.I, xiv, 18. Wang and Chen's translation (p. 65) suggests that the prefect was in charge of verifying facts in a legal trial.

45. Wang and Chen (p. 41) interpret *jie'er duan* 節兒斷 in this manuscript to mean "the prefect decided." They also suggest (p. 42) that this Tiger year should be dated to between 822 and 834, without providing further elaboration.

46. Fujieda suggested these divisions in his pioneering work on the administrative structure of Dunhuang during the Tibetan occupation. Apart from the divisions discussed below, he also mentioned a *Phyug tshams stong sde* that he interpreted as corresponding to *bosan buluo* 攀三部落 in Chinese. See Fujieda, "Toban shihaiki no Tonkō." Note the different opinion on the nature of the Religious Division of Buddhist Monks and Nuns of Taenzer (*The Dunhuang Region during Tibetan Rule*, 53), who, without providing evidence to support her argument, writes that the Religious Division of Buddhist Monks and Nuns was "not one of the administrative units of Shazhou" because "monks and nuns were grouped in the units their families lived in."

47. Iwao, "Organisation of the Chinese Inhabitants in Tibetan-ruled Dunhuang," 71–73.

48. The existence of the Religious Division of Buddhist Monks and Nuns is documented in the Chinese manuscript S. 2729 from Dunhuang, an account of household registration that an individual by the name of Mi Jing 米

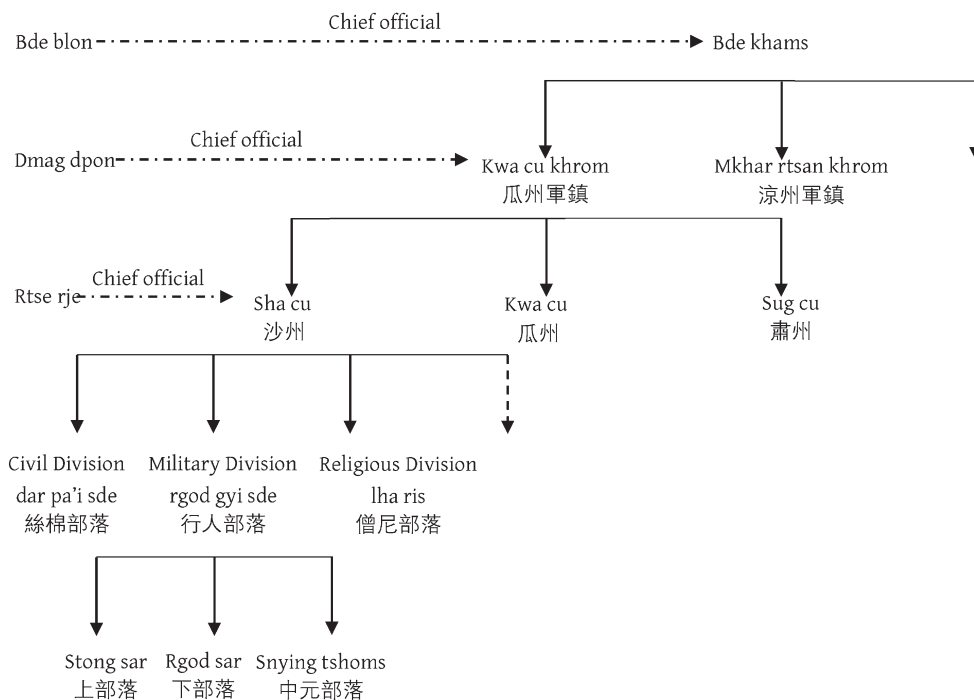


Fig. 1. The Administrative System in Tibetan-ruled Dunhuang.

the end of the Tibetan occupation, the Religious Division of Buddhist Monks and Nuns disappeared because monks and nuns appear to have been affiliated with the Military or Civil Divisions in some Dunhuang manuscripts.⁴⁹ Apart from the Religious Division of Buddhist Monks and Nuns, an entity known as the Religious Division of Daoist Priests, Nuns, and Their Families and Relatives seems to have existed at least as early as 839.⁵⁰

The diagram above (Fig. 1) depicts the administrative structure of Dunhuang during the period under Tibetan control, which should help readers situate Dunhuang within the larger

淨 from the Division of Buddhist Monks and Nuns submitted in the third month of a Dragon (*chen* 辰) year, which Ikeda (*Zhongguo gudai jizhang yanjiu*, 263) dated to 788 in his detailed study of S. 2729.

49. Fujieda's arguments are supported by a Tibetan document (Ch. 73, xv, 10 /Fr. 12, vol. lxix, fol. 62-3) mentioned by Thomas, in which multiple Buddhist monks were reported to be affiliated with Rgod sar, one of the military divisions, and another Tibetan document (Ch. 75, iii/ vol. lvi, fol. 39) mentioned by Thomas, in which a Buddhist nun was affiliated with the Dar pa'i sde, the civil division. See Fujieda, "Toban shihaiki no Tonkō"; Thomas, "Documents, II," 826–32; 830–32. Fujieda's argument is also supported by Pelliot tibétain 1000 and 1001, two documents that record donations of copied Buddhist scriptures made by monks and nuns from Dunhuang, who appear to be affiliated with the three subdivisions within the Military Division (Stong sar, Rgod sar, or Snying tshoms). For examination of Pelliot tibétain 1000 and 1001, see Takata Tokio, "Tufanqi Dunhuang youguan shoujie de zangwen ziliao."

50. Pelliot chinois 4638 contains a eulogy to Yin Jiazheng 陰嘉政, to whom Cave 231 at Mogao was dedicated. The eulogy is dated 839 (*yiwēi* 己未). It mentions that Yin Jiazheng's father was once appointed as "Shazhou daomen qinbiao buluo dashi" 沙州道門親表部落大使, the head of a division that Jiang interprets as a Religious Division of Daoist Priests, Nuns, and Their Families and Relatives that stayed with them in Shazhou. Jiang argues that this is supported by the fact that Daoist texts were found in Dunhuang and Daoist practitioners were mentioned in Dunhuang manuscripts, thus indicating the presence of a Daoist community in Dunhuang. This interpretation is also tenable in that the families of Daoist priests and nuns may have lived with them in Dunhuang. See Jiang Boqin, "Shazhou daomen qinbiao buluo shizheng."

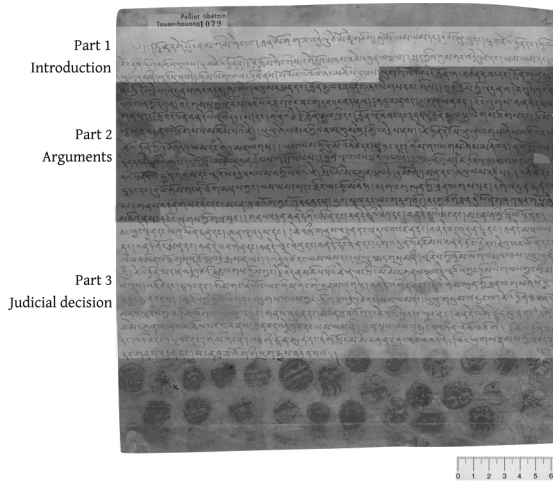


Fig. 2. Structure of Pelliot tibétain 1079 (image courtesy of the Bibliothèque nationale de France).

political structure. It is by no means comprehensive, in that those units whose makeup is not clearly understood are not represented in the diagram.

Notwithstanding possible omissions of certain administrative units that may have been part of this system, the scheme presented above shows that at least four levels of recourse for resolving legal disputes were possibly available to residents of Dunhuang: the court of the Sha cu Prefecture, the court of the Kwa cu Military Government, the higher court of the Province of the Bde khams, and the highest court in central Tibet.⁵¹ What remains unclear is whether initial mediation was first sought within the divisions of inhabitant communities to resolve legal disputes before presenting them to the courts mentioned above.

THE DISPUTE

Pelliot tibétain 1079 (Fig. 2) records a judicial decision issued by judges present at an assembly that the Chief Provincial Official of the Bde khams convened in the Kwa cu Military Government. The document consists of three parts: an introduction of the case (lines 1–3), the arguments presented by both litigants (lines 3–13), and the judicial decision (lines 13–23). At the bottom of the manuscript are the seal stamps of the twenty-seven individuals in attendance at the hearing.

This manuscript informs us that in the winter of a Sheep year (*lug gi lo*) the Chief Provincial Official of the Bde khams held an assembly in a place called Cheg pe'u⁵² in the Kwa cu

51. Based on Pelliot tibétain 1079 and Pelliot tibétain 1089, Lin notes that normally local disputes were first presented at the local court of the prefect. If that court could not resolve the dispute, the case would be forwarded to the higher court of the military government. If a judicial decision still could not be reached in the court of the military government, the case would then be forwarded to the court of the Province of the *Bde khams*. The case might then be submitted to the palace court in central Tibet as the last resort. See Lin, “Tangdai Tufan junzhi zhanlingqu jianzhi zhi yanjiu,” 2007, 16.

52. The specific location of Cheg pe'u remains unclear.

Military Government along the Hexi 河西 Corridor (present-day northwestern China). Lay and monastic officials from the region between Sha cu and Sug cu attended this assembly. Like the audit of monastic possessions at the Yu lim (Yulin 榆林) monastery conducted in a Rat year, which is recorded in Pelliot tibétain 997,⁵³ the primary goal of this assembly in Pelliot tibétain 1079 was to audit the monastic possessions in the Kwa cu Military Government to determine the amount of tax to be paid. During this winter assembly, residents in this area also submitted petitions to settle various disputes. The legal dispute recorded in Pelliot tibétain 1079 was between a Buddhist monastery and three individuals, a nun and two monks. Central to this dispute was the ownership of several bondservants previously related to the Buddhist monk who was deceased when the dispute arose.

In Pelliot tibétain 1079 the plaintiffs stated that monk Bam kim keng gave one of the bondwomen in dispute to his younger sister, nun Meng shun, at the time when the Religious Division of Buddhist Monks and Nuns (*lha ris*) was not yet separated from the three Chinese Divisions (*rgya sde gsum*).⁵⁴ This allows us to date this transfer of the bondwoman to no later than 788, the year when the existence of the Religious Division was attested in S. 2729, as mentioned above. The legal dispute arose later in a Sheep year after 788, the first of which was 791. Taenzer (*Dunhuang Region*, 76) proposes that this Sheep year cannot be dated any later than 827 because monk Hongbian 洪辯 was appointed as the Chief Buddhist Controller (Tib. *mkhan po*; Ch. *du jiaoshou* 都教授),⁵⁵ the highest monastic official of Dunhuang, no later than 830,⁵⁶ but in Pelliot tibétain 1079 Hongbian was only mentioned as “Venerable

53. Pelliot tibétain 997 informs us of a Tibetan ruling that every seven years a team of officials was to audit the property owned by monasteries in the Tibetan-controlled regions on the Sino-Tibetan frontier. The objects that were audited ranged from men and women in households affiliated with the monastery, to animals, wagons, tools, agricultural products, furniture, household utensils, dining ware, mill stones, etc. At the end of the audit, four copies of the approved inventory would be made and sent to four different locations: one copy to the palace (*gcIg nI pho brang du gsol*), one copy deposited with the abbot of the monastery (*gcIg nI gzhi 'dzIn gyi 'dun sar bzha*g), one copy deposited in the Province of the Bde khams, as the original copy (*gcIg nI khams kyl bla dper bzha*g), and one copy given to various officials as a secondary copy (*gcIg nI dpon sna' 'og dper stsal to*). The audit in Pelliot tibétain 997 was performed at Yu lim monastery in 796 or 808. For an introduction, translation, and transcription of the manuscript, see Richardson, “Pelliot Tibétain no. 997”; Wang and Chen, “Yulinsi miao chan die yishi.”

54. These three Chinese divisions must refer to the Stong sar, Rgod sar, and Snying mtshoms divisions discussed above.

55. Hucker (*Dictionary*, 405) translates this title as Buddhist Controller.

56. Fujieda (“Tonkō Senbutsudō no chūkō,” 81–106) found a reference in the Dunhuang Chinese manuscript S. 779 that mentioned Hongbian as occupying the position of the Chief Buddhist Controller in Dunhuang. Takeuchi adds that Hongbian was appointed to this position toward the end of the period of Tibetan control and gives its Tibetan equivalent as *Mkhan po*. See Takeuchi Tsuguhito, *Old Tibetan Contracts from Central Asia*, 236–37. Without mentioning a source of evidence, Peng dates Hongbian’s appointment as the Chief Buddhist Controller to 832, during the reign of Tibetan king Khri gtsug lde brtsan Ral pa can (r. 815–836). See Peng Jianbing, “Guoyijun shouren Hexi Du Sengtong Wu Hongbian Shengping shiji pingshu,” 159. Because the phrase *Mkhan po* Hongbian already appeared as the borrower in a contract in Pelliot tibétain 1203, which Takeuchi (*Contracts*, 237) dates between 830 and 848, Taenzer argues that the Sheep year mentioned in Pelliot tibétain 1079, when Hongbian was still an ordinary venerable (*ban de*), cannot be dated any later than 830. After the Return to Righteousness Army gained control of Dunhuang, Hongbian continued to occupy this position under a new title, chief Buddhist Controller (*du sengtong* 都僧統). See Takeuchi, *Contracts*, 236. Rong calculates that Hongbian’s tenure in the latter period ran from 851 to 853 or 862. See Rong Xinjiang 榮新江, *Guoyijun shi yanjiu*, 292. Peng (p. 159) writes that in 821 Tibetan king Khri gtsug lde brtsan Ral pa can appointed Hongbian as Chief Master of Discipline (*du falü* 都法律), and he concurrently served as Assistant Buddhist Controller (*fu jiaoshou* 副教授). For more on Hongbian and the highest monastic officials in Dunhuang, see Chikusa Masaaki, “Tonkō no sōkan seido”; Ueyama Daishun, *Tonkō Bukkyō no kenkyū*, 10, 90, 100, 364; and Rong Xinjiang, *Guoyijun shi yanjiu*, 280–82.

(*ban de*) Hongbian” with no official title. Therefore, Pelliot tibétain 1079 cannot be dated any later than 827, the last Sheep year before 830.⁵⁷

It is important to note that while the names of all the individuals involved in the litigation were clearly listed, much important information is missing in the document. First, apart from their names, we know next to nothing about the plaintiffs, the nun and two monks. The document does not mention if they were residents or registered with any Buddhist monastery or nunnery. Second, the identity of the defendant, the monastery, is even more obscure. The document does not mention the monastery’s name or its geographical location. This absence of information is not insignificant. Was this lack of disclosure in this legal document to protect the monastery’s reputation? Or was it because the monastery was so well known that it was unnecessary to mention its name to readers who might view this legal document? In any case, the monastery could be located anywhere in the Kwa cu Military Government between Sha cu and Sug cu. However, given the presence only of the Prefect of Sha cu and not the Prefects of Kwa cu or Sug cu Prefectures at the trial, the litigants quite likely resided in the jurisdiction of the Sha cu Prefecture.

Before going into the details of the dispute, it is necessary to introduce the individuals involved in the trial in order to provide a sense of the composition of the judicial team. These three officials decided to hold the assembly in Cheg pe’u:

1. Chief Provincial Official (*Bde blon*) Zhang btsan bzang
2. Minister (*Blon*) G.yu sgra
3. Minister (*Blon*) Zhang Khri dog rje

The assembly was convened in winter at the time when the following three officials would have gathered in Cheg pe’u:

4. Zhang legs sum brtsan
5. Minister (*Blon*) Rgyal bzang
6. Minister (*Blon*) Zhang legs bzang

Having reviewed the monastic estates in Bde khams and set the tax rate, the following officials and individuals from this assembly heard the plaint:

7. Local Head (*Ring lugs*) Venerable (*ban de*) Dpal gnas
8. Instructor (*Slob dpon*) Venerable (*ban de'i*)⁵⁸ Lha'I dbyangs
9. Prefect of Sha cu (*Sha cu'I rtse rje*) Minister (*Blon*) Rgyal KhrI
10. Minister (*Blon*) Lho bzang
11. Minister of Shud pu (*Shud pu Blon*) Rgyal sgra legs zigs
12. Accountant (*Rtsis pa*)⁵⁹ LcI pa klu brtan

57. Taenzer (*Dunhuang Region*, 76) has further narrowed down this Sheep year to 803, 815, or 827, which requires further investigation. Because the Sheep year refers to a year after the three Chinese Divisions (*rgya sde gsum*) were separated from the Religious Division (*lha ris*), Taenzer notes the Sheep year can be no earlier than 814. Without giving any other explanation, she has simply said that she is “quite certain” that the three Civil Chinese Divisions of Sha cu were established in 814. Therefore, if the three Chinese Divisions refer to the three Chinese Civil Divisions, the Sheep year in Pelliot tibétain 1079 should be either 815 or 827. If the three Chinese units refer to the combination of Civil and Military Divisions, the Sheep year would refer to 803.

58. The instructor (Skt. *ācārya*; Tib. *slob dpon*) was one of the three senior monks required to confer a valid full monastic ordination.

59. Wang and Chen (*Dunhuang Tufan wenxian xuan*, 47), as well as Richardson (“Early Judicial Document,” 386), render *rtsis pa* as “finance officer,” without providing further explanation.

The interpretation of the term *Ring lugs ban de*, which I have translated as “local head,” is not unproblematic. Scholars have argued that when it is used in a religious context, *ring lugs* should be interpreted as the abbot of a monastery or the transmitter of Buddhist doctrinal scriptures. When used in a lay context, it is equated with the Buddhist Controller (*sengtong* 僧統), the highest monastic official in Dunhuang.⁶⁰ Yet Takeuchi’s work indicates that the Tibetan term *ring lugs* could not have been used to refer to the highest monastic official in Dunhuang during or after the period when it was under Tibetan control.⁶¹

Nevertheless, because Pelliot tibétain 1079 can safely be dated to the period of Tibetan control, during which the highest monastic official of Dunhuang was mentioned as Mkhan po in Tibetan manuscripts, the term *ring lugs* in Pelliot tibétain 1079 should be taken to mean the local head, who was frequently present at trials over legal disputes. It is noteworthy that the Local Head Dpal gnas appears right after the minister and chief provincial official but before the Prefect of Sha cu. This suggests that whether or not the Local Head Dpal gnas was the highest monastic official, he nevertheless had very high status in Dunhuang’s bureaucratic hierarchy. It is also important to note that this local head was also a venerable (*ban de*) ordained Buddhist. It might be interesting to further examine if he was indeed the Local Head of the Religious Division of Buddhist Monks and Nuns.

The plaint in Pelliot tibétain 1079 concerned a dispute between a monastery and three individuals, a nun and her two fellow monks, regarding the ownership of several servants related to the deceased monk Bam kim keng. The nun and two monks were listed together with the deceased monk, as follows:

13. Nun (*dge slong ma*) Bam za meng shun
14. Monk (*dge slong*) ‘Gin ‘dzwen

60. Scholars concur that *ring lugs* can be used in both lay and monastic contexts, but differ on its meaning in these two contexts. Wang and Chen (“Yulinsi miaochan die yishi,” 8) render *Ring lugs* as Buddhist Controller (*sengtong*), the highest monastic official of Dunhuang, and note that in later Tibetan manuscripts *Ring lugs* was replaced by *Mkhan po*. Uray (“The Title dbang-po,” 420) renders *ring lugs* as “emissary, commissioner” or “transmitter of the doctrine.” Chen (“Zangyu ring lugs yici yanbian kao”) renders *ring lugs* as either “head of a local tribe” (*touren* 頭人) when it is used in Dunhuang Tibetan manuscripts (Pelliot tibétain 1101, Pelliot tibétain 1297, sections 1 and 2, Pelliot tibétain 1084, and Pelliot tibétain 1077), or “preceptor” of a monastery, which she equates with Buddhist Controller (*sengtong*) during the Tang. Richardson (“Early Judicial Document,” 386) renders *Ring lugs* in Pelliot tibétain 1079 as “commissioners” or “registrars” and explains that it designated “a body with judicial functions, the maintainers and interpreters of established laws and traditions.” He maintains this interpretation of *ring lugs* in Pelliot tibétain 997 as “registrar” and explains that this term generally “denotes a court or similar body for ensuring compliance with established precedents and practice” (“Pelliot Tibétain no. 997,” 106). Like Chen, Richardson believes that when used in a religious context, *ring lugs* refers to “an abbot or monastic body responsible for the maintenance and transmission of the Buddhist doctrine.” Apart from similarly interpreting *ring lugs* as the abbot of a monastery, Takeuchi (*Contracts*, 236, 178, 51) concurs with Uray in rendering this term found in contracts as “committee” or “commission.” In his study on Dunhuang manuscripts concerning Buddhist monastic ordination, Takata (“Tufanqi Dunhuang youguan shoujie de zangwen ziliao”) has adopted Chen’s second interpretation of the term and argues that when *ring lugs* was used in combination with “venerable” (*ban de*), the phrase *ring lugs ban de* in Pelliot tibétain 1002 should be understood as Buddhist Controller (*sengtong*).

61. As mentioned earlier, Takeuchi (*Contracts*, 237) notes that the highest monastic official of Dunhuang was addressed in Tibetan as *Mkhan po*, as indicated in Pelliot tibétain 1203 (dated between 830 and 848), wherein Hongben, who occupied that position when Dunhuang was under Tibetan control, was addressed as Mkhan po Hongben. I also note that Pelliot tibétain 1203 was a letter submitted to Mkhan po Hongben. Takeuchi (“Sociolinguistic Implications,” 342–43) also shows that the highest monastic official of Dunhuang during the period when it was ruled by the Return to Righteousness Army, which had replaced the Tibetans in ruling Dunhuang starting from 848, was addressed in Chinese as *sengtong*, transliterated as *sing thung* in Tibetan manuscripts. The argument that the Tibetan term *ring lugs* corresponds to the Chinese title *sengtong* requires evidence to prove that it was used in Dunhuang to refer to the highest monastic official after 848.

15. Monk (*dge slong*) Hwe'I kem
16. Monk (*dge slong*) Bam kim keng

The ownership of these nine bondservants was the central issue in this dispute:

17. Shig za 'bye'u tse
18. Yam yam
19. Lu lu
20. Hwa za tshe'I byin
21. 'Bi tshe
22. Hwa nyang
23. KIm kang
24. Ke'u man
25. Zhe'u yam

When it was time to make a decision, the following individuals gathered in front of the local head to discuss the matter:

26. Elder Venerable (*Gnas brtan ban de*)⁶² ShIng in
27. Venerable (*ban de*) Hwe'I ce'u
28. Venerable (*ban de*) Hwa'I ing
29. Finance Officer (*Mngan*)⁶³ Sha myI snyil po
30. Cang lyang wen
31. E'u sin han
32. An lha 'dus
33. Tshe bzhI gnas brtan
34. 'Dul ba 'dzIn rnyIng
35. Venerable (*ban de*) Cang 'bun hwe
36. Venerable (*ban de*) Mtha' yas
37. Venerable (*ban de*) Shong In
38. Venerable (*ban de*) Phab kin
39. Venerable (*ban de*) Weng ce'u
40. Venerable (*ban de*) Hong ben
41. Venerable of the Upper Clergy (*Dge 'dun Stod rims ban de*)⁶⁴ Tong byI
42. Je'u phab yon
43. LI phab yin

The individuals involved in this legal dispute appear to be ethnically both Tibetan and non-Tibetan, with Tibetan and non-Tibetan names. All of the first twelve individuals appear to be Tibetan. The names of the plaintiffs and the bondservants were certainly not Tibetan.

62. In Dunhuang an Elder Venerable (Skt. *Sthavira*; Tib. *Gnas brtan ban de*; Ch. *shangzuo* 上座) was one of the three major administrators (*sangang* 三綱) of a Buddhist monastery, the most senior monk who had completed more rainy season retreats than other ordained monks in the monastery.

63. Wang and Chen ("Yulinsi miaochan die yishi," 1) write that after Dunhuang came under Tibetan control, a grand finance officer (*mngan chen*) was appointed in the Kwa cu region to take care of economic affairs, and a general finance officer (*sgo mngan*) was appointed in each monastery to take care of economic affairs within each specific monastery. It is unclear whether the finance officer in Pelliot tibétain 1079 was the grand finance officer of the Kwa cu or a general finance officer of the monastery in dispute. Note that Richardson ("Early Judicial Document," 387) translates *Mngan* as "chief revenue officer."

64. *Dge 'dun stod rims* literally means "upper clergy" of the Buddhist monastic community. This is a tentative translation; the term requires further examination.

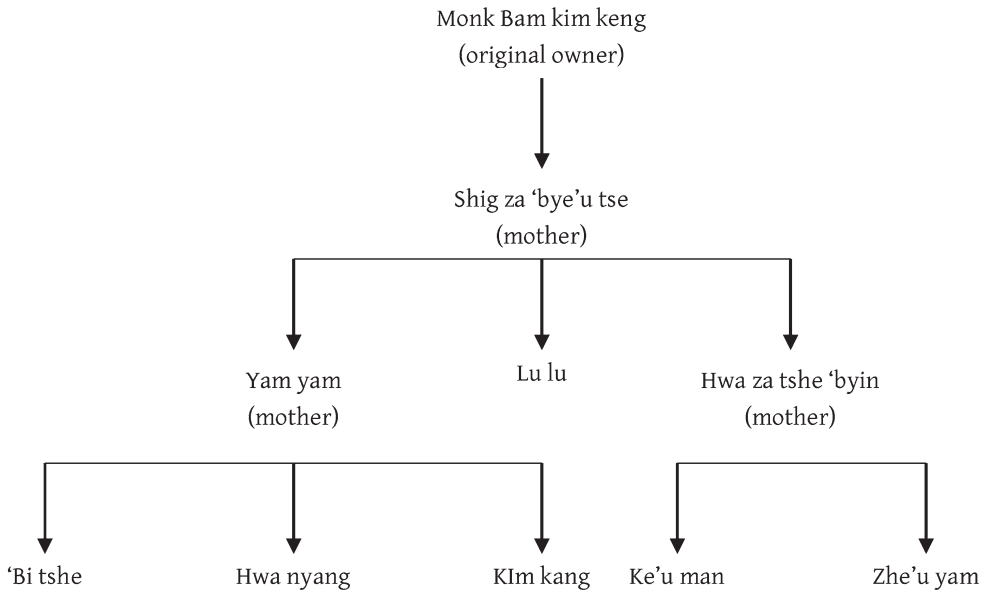


Fig. 3. Relationship between the original owner and the bondservants in dispute.

They may have been Chinese or another ethnicity. The other individuals who participated in the investigation of the dispute either had Tibetan names (nos. 33, 34, 36), a combination of both Tibetan and non-Tibetan names (no. 32), or non-Tibetan names that could be Chinese or some other ethnicity (nos. 26–28, 30–31, 35, 37–43).

A summary of the dispute was recorded at the beginning of the manuscript: “Previously, a Buddhist monk Bam kim king owned four female bondservants: Shig za ‘bye’u btse, Yam yam, Lu lu, and Hwa za tshe ‘byin. When the monk was about to die, he presented three of them to the monastery in dispute, and gave the fourth bondservant to his younger sister, the Buddhist nun Bam za meng shun.” The manuscript does not specify the name of the monastery in question, nor does it inform us whether monk Bam kim king was related to the monastery. Later, according to the monastery’s claim, Yam yam gave birth to three children, and Hwa za tshe ‘byin gave birth to two. The dispute was between the unidentified Buddhist monastery and the nun, along with the two monks who were mentioned later in the manuscript. The focus of this dispute concerns the ownership of the bondservants. The above diagram (Fig. 3) depicts the relationship between the original monk owner and the bondservants in dispute.

The second part of the manuscript records the arguments of both litigants. The monastery argued that Lu lu had changed her name to Hwa za tshe ‘byin and that the bondswoman, who was now called Hwa za tshe ‘byin, was indeed Lu lu. Therefore, both the current Hwa za tshe ‘byin and her two children belonged to the monastery. Moreover, the monastery also claimed ownership of Yam yam and her three children ‘Bi tshe, Hwa nyang, and Kim Kang. This mother-child relationship between Yam yam and the latter three, as claimed by the monastery, however, was not recognized by the judges or the plaintiffs. In other words, the monastery claimed ownership of all of the bondservants. The following diagram (Fig. 4) depicts the monastery’s claim. Names of bondservants that they claim to own are marked in bold.

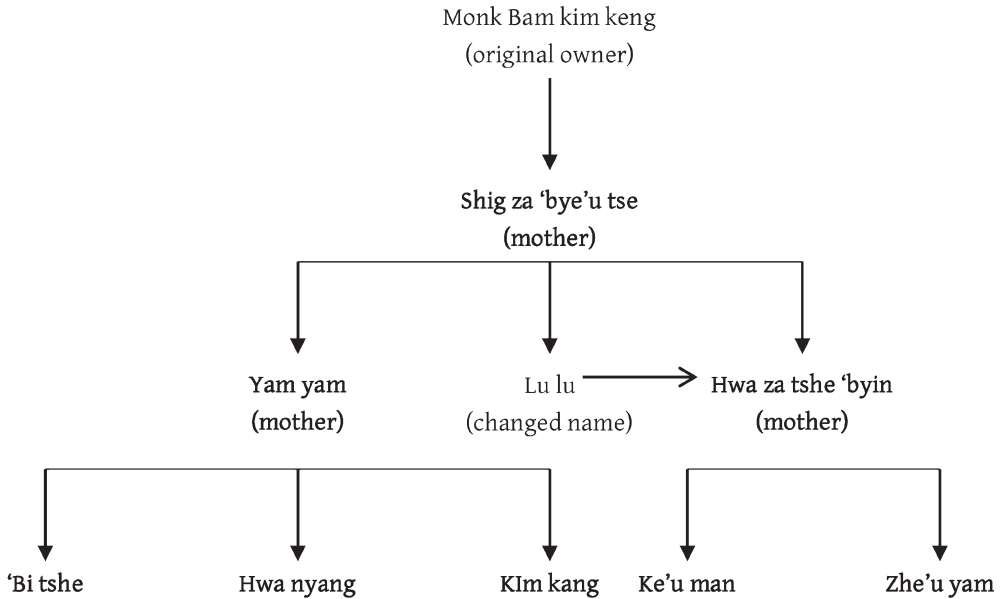


Fig. 4. Argument of the monastery.

The nun and the two monks insisted that Lu lu had already died and had never changed her name to Hwa za tshe 'byin. Moreover, Lu lu's name was not found in the monastery's registrar book. Thus, the monks and nun claimed that the current Hwa za tshe 'byin was the one whom monk Bam kim king had given to his sister, nun Bam za meng shun. Therefore, they argued that Hwa za tshe 'byin and her two children were bondservants of the nun and the two monks.

The two monks further argued that the dead monk Bam kim keng did not own 'Bi tshe, Hwa nyang, or Kim Kang as bondservants. Instead, they were bondservants of the two monks who were the plaintiffs in the case. This argument also indicated that the monks did not acknowledge the mother-child relationship between Yam yam and 'Bi tshe, Hwa nyang, and Kim kang. Otherwise, it would be hard to explain why the monastery that owned the bondswoman did not own her children as well. The manuscript does not mention the argument of the monks on the ownership of Shig za 'bye'u tse or Yam yam. As I will show shortly, the judicial decision made by the judges seems to indicate that the judges sided with the two monks and doubted this mother-child relationship asserted by the monastery. The following diagram (Fig. 5) depicts the claim made by the two monks and the nun. Names of the bondservants they claim to own are marked in bold.

The judges at the assembly ultimately decided in favor of the monks and nun. They declared that Lu lu had died and that the surviving bondswoman named Hwa za tshe 'byin and her two children were bondservants of the nun and the two monks. Although it was not stated in the decision, Lu lu's lack of children may have corroborated that she had died, whether prematurely or not. Furthermore, the judges also ruled that 'Bi tshe, Hwa nyang, and Kim kang were bondservants of the nun and monks because their names were not found in the monastery's registrar. Names of the bondservants declared as belonging to the two monks and nun are marked in bold in the diagram below (Fig. 6):

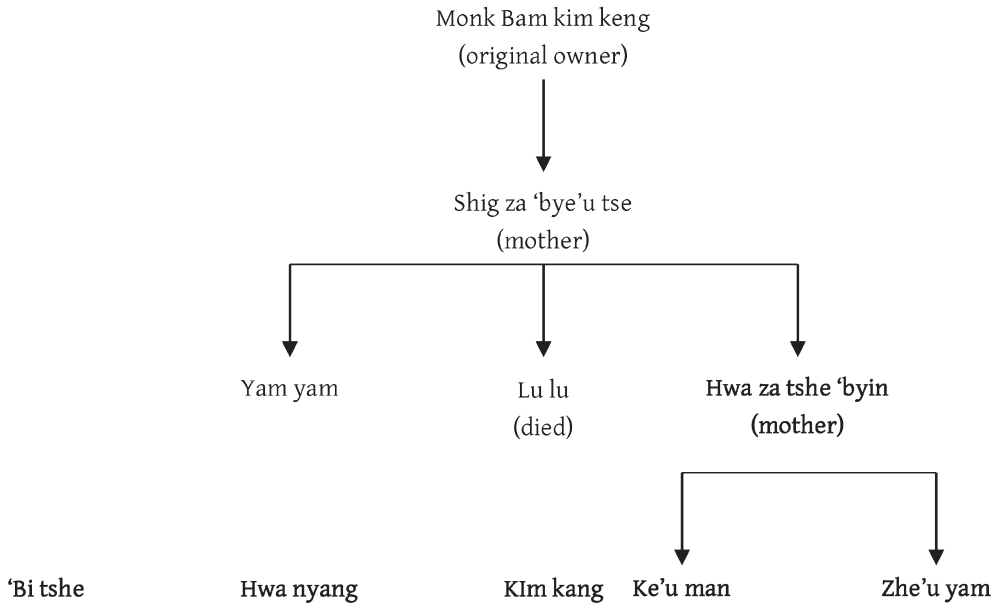


Fig. 5. Argument of the monks and nun.

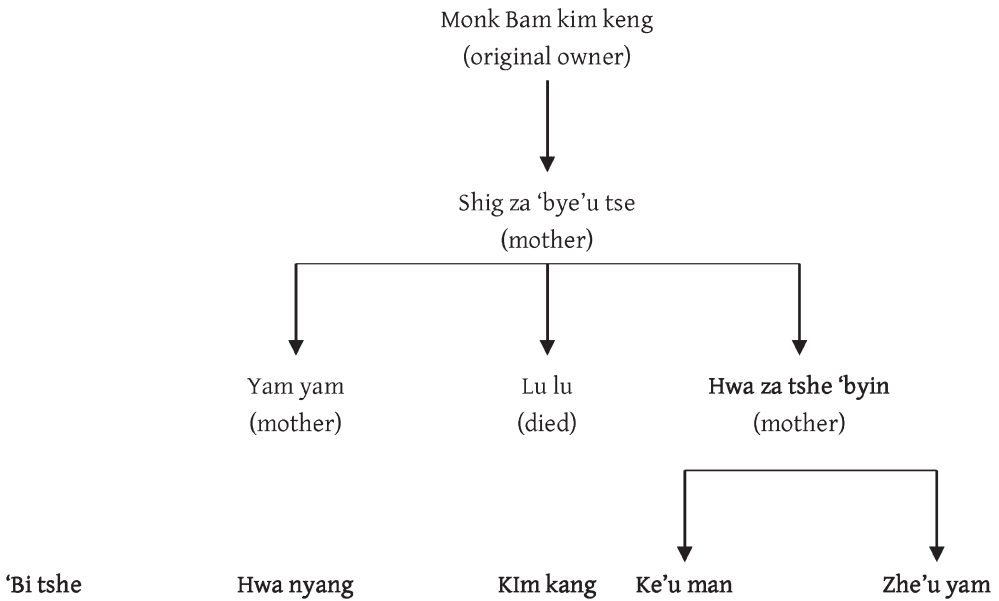


Fig. 6. Judicial decision.

The ownership of Shig za 'bye'u tshe and Yam yam, however, remained unclear. The judges insisted that the registrar book be checked (without specifying that they must have meant the monastery's registrar) to see if the names of these two were recorded there. This judicial decision was then validated with the seals of the officials, litigants, and witnesses involved in the case. It is noteworthy that Pelliot tibétain 1079 contains no record of any participation of or testimony by any of the nine bondservants who were at the center of this dispute. This indicates that they were peripheral to the whole legal process.

THE SIGNIFICANCE OF PELLIOT TIBÉTAİN 1079

Pelliot tibétain 1079 provides important information on legal practices in Dunhuang in a number of ways. First, it shows that when Dunhuang was under Tibetan control from 786 to 848, Tibetan law and the Tibetan legal system operated on their own or in conjunction with Tang law and the Tang legal institutional apparatus. The primary evidence to support this is that the legal dispute in Pelliot tibétain 1079 was submitted to the assembly of the Kwa cu Military Government, a mobile Tibetan court, which indicates that legal cases in Dunhuang during this period were handled according to Tibetan law and legal procedures.

External evidence in another Tibetan document, Pelliot tibétain 1077, also supports this reasoning.⁶⁵ The legal dispute in Pelliot tibétain 1077 was investigated in the winter of a Rabbit year (either 799 or 811),⁶⁶ when Dunhuang was under Tibetan control, and was submitted to and tried by Minister Mtsho bzher of Kwa cu.⁶⁷ This indicates that the trials recorded in Pelliot tibétain 1077 were not performed in the local court in Dunhuang but in the higher court of the Kwa cu Military Government.

Details recorded in the multiple trials of the case in Pelliot tibétain 1077 reveal that both the plaintiff and defendant were familiar with or even well versed in Tibetan law and legal procedures. The dispute in Pelliot tibétain 1077 centered on the ownership of a Tuyuhun 吐谷渾 woman by the name of Kha ka sa dgos bu, between the woman's new owner, the plaintiff To tog stag skyes, and her previous owner, the defendant. The plaintiff claimed that he received the woman in dispute from the defendant in the winter of a Rabbit year, as payment of a debt owed to the plaintiff. The arguments of both parties were recorded in multiple subsequent trials. Pelliot tibétain 1077 recorded that both the plaintiff and defendant quoted statutes in Tibetan law and refuted each other's quotations several times through multiple hearings of the case. Toward the end of the document, it records that the plaintiff described himself as "an inferior barbarian who was unfamiliar with the law of Tibet" (*ngan pa lho bal bod kyi bka' khrims ma 'tshal*) and asked the judges to excuse him if he had said anything contradictory or incompatible with Tibetan law. He also requested his case "be decided in accordance with the law that applied both at the center and in the borderland" (*bka' khrims*

65. For an annotated translation and transcription of Pelliot tibétain 1077, see Wang and Chen, *Dunhuang guzangwen wenxian tansuoji*, 190–95; 267–71.

66. For dating of this Rabbit year, see *ibid.*, 268.

67. This Minister Mtsho bzher appears in at least four other Tibetan documents. Iwao ("Organisation," 69–70) notes that in Pelliot tibétain 1166 Minister Mtsho bzher "sends a letter to the tax levy officers" of the two communities with Chinese inhabitants, *dar pa'i sde* 絲綿部落 and *rgod kyi sde* 行人部落, the Civil and Military Divisions discussed above. His name also appears in Pelliot tibétain 1126, a fragmentary one-folio manuscript with several big Chinese characters and several short paragraphs of Tibetan written in a much smaller hand. In the third line of one paragraph it mentions a "nang rje po blon Mtsho bzher." Another Tibetan manuscript Or 15000/496 found in Mirān contained an official dispatch issued from an assembly (*gdun sa*) brought together by Minister Mtsho bzher and Minister Lha bzher. For a detailed physical description of Or 15000/496, see Helman-Wazny, *Archaeology of Tibetan Books*, 238.

tsam zhig dbung mtha' na tshang bam chis pa dang sbyar zhing ghad par gsol). These statements and requests from the plaintiff indicate that the law and the legal procedure of Tibet were already in effect in this frontier in the greater Dunhuang region. The fact that the plaintiff had constantly cited legal articles and refuted those presented by the defendant shows that he had indeed had a fairly good command of Tibetan law and legal procedures, which attests to the influence, presence, and operation of the Tibetan law and legal system in Tibetan-ruled Dunhuang.

Second, depending on actual circumstances, the legal procedures recorded in Pelliot tibétain 1079 suggest that the Tibetan legal system, or at least the legal system in operation in Dunhuang at that time, may have accommodated the possibility of “leapfrog” appeals that allowed litigants to skip the local courts and submit a legal complaint directly to a higher court. The decisive factor in this possibility was whether this case in Pelliot tibétain 1079 was directly presented to the court of the chief provincial official or had been previously tried unsuccessfully in local courts of the Sha cu Prefecture or the Kwa cu Military Government. If the case in Pelliot tibétain 1079 was directly presented to the chief provincial official at the assembly of the Kwa cu Military Government, it was an exceptional leapfrog appeal that allowed the litigants to skip the local court and directly submit a legal dispute to a higher court. This exception was normally granted when a party in the litigation was connected to the court at the local level in a way that would affect the fairness of the judicial decision.⁶⁸ If the case had been previously tried in local courts in Sha cu, Kwa cu, or Sug cu or in the court of Kwa cu Military Government and was later forwarded to the higher court presided over by the chief provincial official, this would be insufficient to infer that the Tibetan legal system operating in Dunhuang accommodated “leapfrog” appeals.

Third, Pelliot tibétain 1079 also provides rich information on the operation of the Tibetan legal system in Dunhuang. It reveals details about the composition of a judicial team in the Tibetan legal system. Pelliot tibétain 1079 informs us that the legal dispute between the monastery and the two monks and the nun was submitted to the assembly of the Kwa cu Military Government for investigation. The judges involved in the case include officials with the titles chief provincial official, Military Head of the Kwa cu Military Government, and Prefect of Sha cu. In other words, this case was presented in the highest court in the Bde khams, which had officials from different administrative units. The judicial team in Pelliot tibétain 1079 included over twenty individuals. Nineteen of the jurors were venerable (*ban de*) ordained Buddhists from monasteries, a finance officer, and lay individuals without official titles.⁶⁹ These jurors reported to a local head. Together, these laymen and Buddhist monks discussed the case and made the final judicial decision. The recommended judicial decision was then reviewed and authorized by the local head, the elder monks, and the finance officer. It should be noted that the composition of officiating individuals recorded in Pelliot tibétain 1079 may not be typical of judicial teams in Dunhuang courts. For example, the financial officer, whose

68. One example of a “leapfrog” appeal is found in a Tang Chinese legal document from Turpan, which recorded that in 691 the plaintiff Tang Jianjin 唐建進 from Tianshan 天山 District (*xian* 縣) filed a complaint against defendant Gao Tianzhen 高天禎, the Assistant Magistrate (*zhubu* 主簿) of Tianshan District. The case was directly investigated by the higher court of Xizhou 西州 Prefecture but not by that in the Tianshan District. The reason for this, as Feng has pointed out (*Tangdai minshi falü zhidu yanjiu*, 175), is that the defendant was an official in the local government of Tianshan District. For a complete transcription of this Chinese legal document, see Liu and Yang, *Zhongguo zhenxi falü dianji jicheng*, 95-114.

69. The role of jurors in the Tibetan legal system is attested in Pelliot tibétain 1071, where twelve jurors (*gtsang dkar*) swore an oath and made judicial decision on a case of homicide. For a study and translation of Pelliot tibétain 1071, see Richardson, “The Province of the Bde-blon,” 150, and Dotson, “Divination and Law,” 10-11.

presence would have been crucial in an assembly to set up the tax rate, may not have been included in other trials in Dunhuang.⁷⁰

Fourth, Pelliot tibétain 1079 indicates the vital role of the local head in the trial of legal disputes. Richardson had rightly pointed out that a local head in Tibetan documents designated “a body with judicial functions, the maintainers and interpreters of established laws and traditions.”⁷¹ The local head’s role as a judicial official is attested in a number of Tibetan legal manuscripts from Dunhuang. In Pelliot tibétain 1078 a local head stamped his seal (*sug rgya*) in the judicial decision concerning a territorial dispute between two households in the Stong sar division.⁷² In Pelliot tibétain 1297 a local head had initially tried to stop a violent fight between two shepherds aided by their nephews who were venerable (*ban de*) ordained Buddhists, and then assisted the judge (*zhal ce pa*) in interrogating individuals from both parties to the fight during the investigation of the case.⁷³ In Pelliot tibétain 1084 a local head not only assisted two judges (*zhal ce pa*) in the trial of a case, but also stamped his seal to validate the judicial decision attached to the end of the manuscript.⁷⁴

Moreover, Pelliot tibétain 1079 also sheds light on the interaction between the state and clerical legal systems in Dunhuang. My analysis demonstrates that when a dispute arose in Dunhuang, the Buddhist monastery and the three ordained Buddhists ended up litigating in public court. This was the case even in complaints where both litigating parties were affiliated with the Buddhist clergy. In an ideal situation, disputes between ordained Buddhists should first be dealt within the Buddhist clergy. If the two parties in the dispute were from different Buddhist monasteries or nunneries, the dispute would have been submitted to the officials in charge of religious affairs for resolution, up to the Buddhist Controller. Pelliot tibétain 1079 shows that, in practice, despite the fact that both litigants were institutions and individuals within the Buddhist monastic community, the case was either never treated as an internal religious affair to be resolved with the Buddhist clergy, or it had been previously mediated within the Buddhist clergy, but lacks any surviving record. In either case, Pelliot tibétain 1079 tells us that the dispute was eventually tried in a public court presided over and attended by a mixed team of lay and monastic officials, judges, and witnesses with multiple linguistic and cultural backgrounds. These findings indicate that the actual confrontation between religion and the state on the Sino-Tibetan frontier was more complicated than jurisdictional disputes between an idealized hierarchical Buddhist clergy and a monolithic state apparatus. Such interactions were, instead, much messier—and manifested on many different levels over a wide range of issues.

70. I am unable to provide more information now, since the specific compositions of typical judicial teams remain a topic for a separate study.

71. See Richardson, “An Early Judicial Document from Tibet,” 386.

72. For a transcription of Pelliot tibétain 1078, see Wang and Chen, *Dunhuang guzangwen wenxian tansuoji*, 197–99; for a translation and analysis of this manuscript, 293–94. Note that Chen and Wang render *ring lugs* in this manuscript as tax officer (*shuili* 稅吏).

73. In Pelliot tibétain 1297, section 2, two shepherds fought on the fifth day in the sixth month in the summer of a Pig year. The fight escalated when their nephews, two Buddhist novice monks, joined in and injured each other. For translation of the manuscript, see *ibid.*, 278; for a transcription, 205–6.

74. For a translation of the manuscript, see *ibid.*, 280; for a transcription, 209.

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